A HISTORY OF POLITICAL THEORIES

FROM LUTHER TO MONTESQUIEU

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New York
THE MACMILLAN COMPANY
LONDON: MACMILLAN & CO., LTD.
1905

Set up and electrotyped Published August, 1905.

Norwood Press
J. S. Cushing & Co. — Berwick & Smith Co.
Norwood, Mass., U.S.A.

PREFACE

THIS volume carries forward to the middle of the eighteenth century the work begun in the *History of Political Theories, Ancient and Mediæval*, published three years ago. Save for slight modifications to meet the special requirements of the modern period, the scope and method announced in the earlier volume have been adhered to. In connection with the present work the author desires to make grateful acknowledgment to his colleagues, Professors Herbert L. Osgood and James H. Robinson, for useful suggestions on particular parts of the manuscript which they have read; to Mr. Francis W. Coker, University Fellow in Political Philosophy at Columbia, for verification of references and bibliography; and especially to Professor C. E. Merriam, of the University of Chicago, who has read the proofs of the entire volume and has rendered inestimable service by his sound critical judgment and his accurate scholarship.

LAKE SUNAPEE, N.H.
July 4, 1905.

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A HISTORY OF POLITICAL THEORIES

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POLITICAL THEORIES

CHAPTER I

THE REFORMATION

1. *General Character of the Protestant Reformation*

In the sixteenth century political theory, like all other phases of intellectual activity, was dominated by the influences of the great Protestant revolt. Primarily the Reformation, as a philosophical phenomenon, was theological in character. It was concerned with the relations of man to God and with the ways and means by which men were to be assured of eternal happiness in the world to come. As the issue was made up at the outset by Luther, it consisted essentially in the relative importance of faith and of works as a means of justification; that is, in the question whether the saving grace of God was manifested chiefly by the inward spiritual transformation of the individual, or rather by conformity to the prescriptions which the church declared essential to sanctity.

The controversies that developed out of this question soon brought into the foreground the ecclesiastical phase of the reforming movement. Condemned by the recognized authorities of the church, the Re-

formers challenged the right of those authorities to decide the question, and raised the issue as to the nature and constitution of the Christian church. The ancient authority of the Roman See was flatly repudiated; but further than that, not even a general council was recognized as qualified to give final decisions on questions of faith or worship, and the bonds of ecclesiastical organization and discipline were wholly dissolved by the doctrine that the individual conscience, interpreting the word of God in the Scriptures, was the sole and conclusive criterion of Christian duty.

Finally, the demoralizing and atomistic tendencies that were manifestly involved in this latter dogma found a corrective in the ethical element which was conspicuous throughout the philosophy of the Reformers. That a rigid observance of the rules of common morality as prescribed in the Decalogue was essential to a Christian life, was a cardinal feature of all the new teaching. Whereas the old church had tended to put the emphasis on the penance for sin after it was committed, the Reformers laid the stress on not committing it. The whole attitude of the Reformers in this respect made for social betterment, and was responsible for that reunion of morality with religion which has characterized both the Catholic and the Protestant churches ever since the separation.

While the theory of the Reformation thus embraced only theological, ecclesiastical and ethical elements, its practical application involved questions of most far-reaching political and social import. As the doc-

trine of the Reformers was developed and spread over Europe, the secular governments took but languid interest in the theological phase of the movement; but when the matter of renouncing the authority of the Pope came up, there was no lack of concern. Two questions had to be settled in every country which adopted the Reform: (1) What disposition should be made of the ecclesiastical property, revenues and jurisdiction in which, under the old system, the Roman See had had so substantial an interest? and (2) What limit, if any, should be set to the variations in creed and worship which, on the principle of individual interpretation of the Scriptures, were assuming fantastic and revolutionary forms? The first of these questions the government generally answered by appropriating to itself a large part of the property and jurisdiction, and assigning the remainder to an ecclesiastical organization which was substantially a dependency of the secular authorities. Henry VIII of England, as is well known, effected the ecclesiastical severance from Rome without any formal deviation from theological unity, and under the influence of motives that were quite devoid of religious or moral quality. Nor can it be doubted that the German and other princes who supported the Reformation were actuated at least as much by the prospect of enhancing their own power and dignity as by any profound conviction of the abstract righteousness of the Reformers' doctrine. The ground had been prepared for the separation from Rome by the long-standing abuses of papal patronage and jurisdiction,

and the now inveterate consciousness among the peoples of the North that they were being financially exploited by an Italian potentate whose policy was largely secular.

As to the second question, it had early to be admitted by the Reformers themselves that some line must be drawn beyond which the vagaries of private judgment in interpreting the Scriptures must not be tolerated. The beginning of the Lutheran movement was quickly followed by the appearance of many Reformers who found in the Word of God doctrines that were subversive of the ancient social and political order, as well as of the ancient ecclesiastical system. From the theory of baptism which was preached by some of these sectaries the term "Anabaptist" came to be applied generically to all of them. These were the radicals of the Reformation, and the various shades of extravagance which prevailed among them — each firmly grounded by its votaries on the Bible — included such extremes as are suggested to-day by the names of Quakers and Anarchists, with all the forms of socialism, communism and other heresy that lie between. Against these extremists the leaders of the Reform felt called upon to take a decided position, and denunciation of Anabaptist doctrine is conspicuous throughout the works of Luther, Zwingli and Calvin. In 1524–1525 a serious insurrection of the peasants in southern and central Germany was attended by demonstrations by Anabaptist agitators, and was the subject of a violent diatribe by Luther against the insurgents.

Ten years later an especially savage outbreak of fanaticism in Münster, Westphalia, revealed the full barbarism to which the triumph of the extremists would lead. It was the merest matter of self-preservation that the moderate Reformers should absolutely dissociate their movement from these sectaries; hence support of the established political power in all that did not imply recognition of the Papacy was the uniform practice of the leaders. This strict alliance for common defence between the governments, enjoying the spoils of the old church, and the Reformers, preaching a non-political life, is one of the characteristic features of the earliest period of the Reformation. An obvious practical consequence was the further exaltation of the power and dignity of the secular governments and particularly of the monarchs. The Reformation clearly promoted, in the first half of the sixteenth century, the development of absolute monarchy.

The middle of this century marks fairly well the end of the first stage in the religious transformation of Europe. By that time the Lutheran phase of the movement had achieved its most distinctive work, and the Calvinistic phase was about to assume the greatest prominence. The geographical limits of the secession from Rome were pretty definitely determined. In Germany Charles V, after long subordinating the matter to the interests of his policy against France and the Turks, had finally assumed the defence of the old order in religion, and proceeded to the subjugation of the Protestants. He was beaten,

however, though more on political than on religious grounds; and by the Religious Peace of Augsburg, in 1555, the Lutheran princes were secured in the right to maintain within their dominions the creed of their choice. Northern Germany, roughly speaking, thus became constitutionally Protestant. The Scandinavian states had already assumed formally that character. Western and southwestern Germany was strongly Reformed and Calvinistic in faith, but this creed was not recognized in the Peace of Augsburg, and hence had no sanction in the law of the Empire. A considerable part of Switzerland was thoroughly Zwinglian, while the Reformed doctrine had a strong hold on France and the Netherlands, though lacking in either the recognition of the law. In England the reign of Edward VI (1547–1553) gave formal effect to the Protestant doctrine which Henry VIII had never tolerated, but which was clearly acceptable to the most influential elements of the population; and in Scotland, finally, it was in 1555 that John Knox, fresh from his training under Calvin at Geneva, began that energetic propaganda which soon enabled the hitherto halting and timid Scottish Reformers to make their country a mainstay of Presbyterianism.

The remainder of Europe was secure from serious Protestant influence, and the Papacy had by the middle of the sixteenth century entered upon the policy of reform and aggression by which it put an end to the further sweep of Protestantism. The Council of Trent, in a checkered career beginning in 1545, had put dogma and worship upon much firmer

grounds than ever before; the Jesuits had entered upon their efficient and energetic career; and thus the Catholic Reformation had been definitely begun. With the forces of the old order and the new in fairly equal combat, the relation of the theories of the religious parties to politics gradually changed: whereas in the first stage of the movement the Reformers' doctrines were subsidiary to practical and theoretical politics, in the later stage they assumed the controlling part. But before considering this situation, let us examine the attitude of the great men who inaugurated the Reform.

2. *Martin Luther*

But two doctrines of political significance are unmistakably derivable from Luther's voluminous writings: first, the absolute distinction in kind between spiritual and secular interests and authority; and second, the Christian duty of passive submission to the established social and political order. And even these two are at times fluctuating and obscure in the shiftings of the Reformer's policy. For Luther's part in the movement which made him famous was that of an agitator rather than a philosopher. He was, at the inception of the movement, as far as possible from any large and coherent project of even theological reconstruction. The correction of a few obvious abuses was the limit of his ambition at Wittenberg, and there are abundant evidences of his profound astonishment at the magnitude of the obstacles which gradually appeared in his way. It

was in surmounting these obstacles that his characteristics as an agitator became manifest — brutelike vigor and much resourcefulness in controversy, and a profound susceptibility to the currents of popular feeling in his German environment.

The denial of the supremacy of the Pope in the church was no part of his early contention;[1] but when the papal legates tried to browbeat him into unquestioning submission, and Rome at last issued its condemnatory bull and made him a heretic, he took up with all zeal the denunciation of the Petrine dogma. Every form of attack on the theoretical and historical supports of the Papacy that had been employed by Marsiglio and Ockam was pressed by Luther with his customary vehemence, and at the door of the Roman church was laid the responsibility for not only a high-handed usurpation of temporal power and prestige, but also a gross perversion of doctrine and ceremonial. He demanded a radical reform of the whole system, based on the abolition of all the most characteristic features of the mediæval organization and practice, and a recurrence to the ideas and institutions of patristic Christianity. The instrument which he proposed for accomplishing this reform was a general council; but the whole tenor

[1] See his *Resolutio de Potestate Papæ* (*Opera Latina*, Vol. XXXIV, p. 296). In this he concedes that the Pope is *de facto* the head of the church and must be recognized as such; but he denies that this primacy is Scriptural or of divine right, and he vehemently assails the extreme pretensions set up for the Papacy in the Canon law. The offensive decretals he ascribes, not to the Popes themselves, but to their courtiers; *e.g.* "Innocentius III sive familiaris eius scriba;" "notarius Papæ;" "is scriptorculus Romanus."

of the powerful pamphlet in which he most distinctly formulated his demand, *To the Christian Nobility of the German Nation*,[1] shows that his purpose was to find a sure support in German national sentiment as against the Italians, and that he looked to action by the German governments for the success of the movement he had in mind. The twenty-seven points in which he summarizes the reforms that must be effected "by secular power or general council" include the abolition of practically all the revenues and all the jurisdiction of the Pope in regions outside the estates of the Roman church, and the recognition and enforcement of the principle that whatever involves money, estate or any material interest shall be left to the secular authorities.[2] In the faith and charity that are the essence of Christianity he holds that all Christians are equal. Pope and bishop and priest are merely officers for the regulation and promotion of Christian living, and their duties in no way involve exceptional relations to the political order. As Luther reflected upon this conception, the whole system of the mediæval church took in his mind the form of a deliberately devised and craftily executed project for the acquisition of wealth and political power by the papal court. The Canon law, with which his adversaries confronted

[1] *An den christlichen Adel deutscher Nation von des christlicher Standes Besserung.* Modernized German text in Lemme, *Die drei grossen Reformations-schriften Luthers vom Jahre 1520.*

[2] "Was Geld, Gut und Leib oder Ehre anbetrifft, den weltlichen Richtern lassen; geistlich Gut ist nicht Geld noch leiblich Ding, sondern Glaube und gute Werke."

him at every turn, he regarded as merely the body of doctrine in which the conspirators had given their project a legal form, and had shamelessly confounded things material with things divine. As an essential feature of the return to the true system he demanded, therefore, the total repudiation of the Canon law, with all the authority and jurisdiction based upon it.[1]

Luther did not, however, deny the necessity of some system of discipline for the maintenance of the true order in worship and belief. But he was never as successful in construction as he was in destruction. Though the idea that religious life was to be regulated by means that were purely spiritual was sedulously adhered to, the practical outcome of the distinctively Lutheran reform was the appropriation by the secular authorities of much of that paramount influence in ecclesiastical affairs which was taken away from the Papacy. The tendency in this direction received strong confirmation from the emphasis with which Luther asserted the duty of passive obedience.

This second clear element in Luther's political creed is particularly apparent in his conception of the divine character of secular government, and in his attitude toward the rebellious peasants and the fanatical Anabaptists. The definitive breach with

[1] His twenty-fifth point in the address to the Christian nobility is that the universities need "eine guten starken Reformation," one element of which is that the study of the Canon law shall be "zu Grunde ausgetilgt." The importance he attached to this matter was particularly expressed in burning a copy of the Canon law together with the Pope's bull of excommunication. *Cf.* Köstlin, *Martin Luther*, Vol. I, p. 405.

Rome and the anathema against Luther for heresy soon brought up the practical question as to the duty of the numerous adherents of his doctrine in states whose princes undertook to enforce the Pope's decree. In 1523 this subject was treated by Luther in his work entitled, *Of Secular Authority: How far is Obedience due to it?*[1]

The doctrine of this work is based by Luther exclusively on the Bible, and is that of the church fathers, sharpened by something of that contempt for secular rulers that was manifested by their papal adversaries in the Middle Ages. Secular power, he holds, is sanctioned by God. It is necessary because the great majority of mankind are not Christians. For Christians the guidance of the Holy Spirit is all that is required; but for those that lack this guidance the sword of the secular ruler is necessary in order that external peace and order may exist. Submission to civil government is directly enjoined upon Christians by the Scriptures,[2] and the basis for this injunction is, not that Christians need such government for themselves, but that they must do what is for the good of others. This altruistic principle is very ingeniously adapted to the support of Luther's view that the duty of the Christian subject extends to bearing arms for his sovereign. On this point the argu-

[1] *Von weltlicher Oberkeit, wie weit man ihr Gehorsam schuldig sei.* Luther's *Werke* (Weimar), Vol. XI, p. 245.

[2] Luther depends upon the texts which had been employed throughout the Middle Ages, but laid especial stress upon Gen. ix, 6: "Whoso sheddeth man's blood, by man shall his blood be shed," as expressing the divine sanction of governmental power.

ment labors a little in dealing with the non-militant spirit of the New Testament, but he falls back on the doctrine that while the Christian may not draw the sword for himself, he must do so for the good of others, and must contribute his share to restrain wickedness and protect the reign of righteousness. The duty of the Christian subject to obey his prince or to fight for him ceases, however, when the prince is manifestly in the wrong; but it holds good in all cases of doubt as to the right or wrong of the cause.[1]

As to the power of the civil government over matters of belief, Luther, interested primarily in the persecution of his followers, takes strong ground against any extension of secular power into the field. Only what is corporeal and outward can be affected by the laws of the state; a legal injunction to believe so and so is folly. Belief can be determined or affected only by persuasion and by the secret power of God. Hence heresy cannot be extirpated by sword or fire or water; such means only confirm it. The prevailing system precisely inverts the true functions of prince and bishop. The bishops neglect their duties as teachers and call upon the princes to root out heresy; while the princes leave the punishment of usury, murder and theft to the bishops and waste their time in seeking to preserve the faith. "They rule the souls with the sword and the body with words; secular princes govern as spiritual, and spir-

[1] Where the case is doubtful, it must be regarded as subject to the secret will of God, who for his own purposes relieves the faithful of responsibility.

itual princes as secular." But nothing better could be expected under the most prevalent political conditions; for, Luther roundly declares, princes are usually "the biggest fools or the worst knaves on earth."[1] Their function is merely that of jailers and hangmen for God, whose majesty requires that even the meanest of his servants shall be high-born and wealthy. A wise prince or a pious prince is a miracle, and attests the most exceptional favour of God.[2]

These contemptuous opinions of the holders of political power in no way qualified Luther's contention that the duty of the subjects was obedience. On this ground he based his fierce denunciation of the peasants who rose against their lords in western Germany; and this, together with his doctrine that secular government was divinely established, animated his fervour against the Anabaptists when they sought to carry out into practice his own idea that Christians did not need any human regulating control. The proceedings of these fanatics put to the severest test Luther's principles as to the treatment of heresy, and forced him to recognize that practically the civil authorities must fix a limit of toleration for subversive religious beliefs, and must use force when the limit is passed.

[1] Von anbegynn der wellt gar eyn seltsam vogel ist umb eyn klugen fursten, noch viel seltsamer umb eyn frumen fursten. Sie sind gemeynlich die grösten narren odder die ergisten buben auff erden. — *Werke* (Weimar), XI, 267–268.

[2] It is hardly surprising that these opinions were made the basis of demands from the Saxon Duke George that Luther be disciplined. Köstlin, I, 631.

As time went on, the trend of things in Germany toward a definite rupture between the Emperor and the Protestant princes caused Luther to weaken at last in his doctrine of passive obedience. He said that the issue between princes and Emperor was largely one of constitutional law, where the jurists could decide better than the theologians; but at the same time he set up, tentatively and with obvious hesitation, the plea that, as to purely temporal matters, self-defence was the right of a Christian, and particularly so in case of tyranny. Martyrdom had been a Christian duty under Diocletian; but Charles V was not an absolute monarch like Diocletian, and hence the time for martyrdom was past:[1] if the laws that bind the Emperor are disregarded by him, submission is no longer a duty of his subjects. In these modifications of the earlier Lutheran teaching there is the germ of the theory which ultimately dominated all the Protestants and the Catholics as well, and determined the course of political philosophy during the long period of religious wars.

3. *Melanchthon*

Philip Melanchthon, the young disciple whom Luther loved, was of a wholly different intellectual make-up from his master. Luther was the rough, aggressive, fearless German, who never got far away from the mental habit of the mediæval monk; Melanchthon was refined, conciliatory and timid, and deeply imbued with that humanistic spirit which was at war

[1] *Table Talk*, trans. by Hazlitt, sec. 828, p. 333.

with everything mediæval in northern Europe. The classical learning of Melanchthon was most extensive and his Latin style was a marvel of lucidity and grace.[1] Luther, in assailing the theology of the Romanists, included in the sweep of his denunciation the whole Aristotelian philosophy which had become so closely associated with that theology; Melanchthon, on the contrary, recurred with admiration and confidence to Aristotle's ethics and politics, and drew largely from them in formulating a system that should be suitable to the Reformed faith. But though Melanchthon was moderate and scholarly in his disposition and method, and well adapted to the task of furnishing the Reformation with a philosophy, nevertheless, his writings, like Luther's, exhibit the vacillation and incoherence that were inevitable in the stress of ecclesiastical revolution. For example, the right of the secular authorities over matters of faith and worship, and the duty of subjects to obey their lords, assume different aspects according as his discussion concerns primarily Catholic princes and Protestant subjects, or Protestant princes and Catholic subjects. But apart from such topics, which were inseparably associated with current controversies, Melanchthon sought with some success to construct a general system of moral and political philosophy that should be of universal validity. In this task he was true to Luther's spirit in taking the Scriptures

[1] Luther's judgment on Melanchthon and others is reported to have been as follows: "Res et verba Philippus [Melanchthon]; verba sine re Erasmus; res sine verbis Lutherus; nec res nec verba Carolostadius." — *Table Talk*, sec. 846.

as his starting-point; but his method and much of his doctrine kept him close in the line of the Scholastics, and he employed with intelligence and discrimination even the Canon law, which Luther so vehemently proscribed.[1]

Melanchthon's system is based on the concept of natural right (*ius naturæ*) or, what is the same thing from a different point of view, natural law (*lex naturæ*). This law consists in the perception which God has implanted in the human mind of the practical principles concerning, first, the existence of God himself and the obedience due to him; and second, the civil institutions which promote his glory.[2] The precepts of natural law are summarized in the Decalogue, of which the first table (*i.e.* the first four commandments) determines man's duty toward God, and the second table (the last six commandments) his duty toward his fellow-man. Whatever institutions may be logically based on the Decalogue, therefore, are in accordance with natural right; but this direct revelation of God's will is not the only source from which the law of nature may be derived. The nature or end of man furnishes immediately and without demonstration certain universal principles (*sententiæ com-*

[1] Melanchthon's treatises on ethics and politics are in his *Opera* (ed. Bretschneider and Bindseil), Vol. XVI. See especially the *Philosophiæ Moralis Epitome*, Bk. II, and the commentaries on Aristotle's *Ethics* and *Politics*.

[2] Notitia principiorum practicorum et conclusionum quæ ex illis necessaria consequentia ducuntur, divinitus insita mentibus humanis, non solum de moribus civilibus, sed primum de agnitione Dei et obedientia Deo debita, postea de moribus civilibus qui referendi sunt ad hunc finem, ut Deus celebretur. — *Opera*, XVI, 384.

munes) — such, for example, as that man is adapted to social life — from which it is possible to derive by reasoning the practical rules of right living. Whatever may be logically deduced from these principles of human nature, therefore, must be considered as included under natural law as well as under the law of God.[1] It is the business of philosophy — as distinct from theology — to detect and explain these fundamental principles that are written in nature, and by reason to determine in accordance with them the arrangements that are essential to physical existence. But a caution is here necessary, and Melanchthon explains that "not all the dreams of philosophers are to be regarded as oracles," but only those opinions are to be accepted which conform with the utmost precision to the requirements of logical deduction.[2] Such as do fulfil these conditions are truly natural law; and natural right, therefore, includes all human relations that can be derived either from the commands of God in the Decalogue, or from right reasoning about the nature of man.

The principles of natural law furnish a basis for private property and for liberty. The right of property is distinctly expressed in the command of the Decalogue, "Thou shalt not steal;" but Melanchthon is obliged by circumstances to qualify here, and in order to sustain the Protestant princes in con-

[1] Omnes igitur sententiæ de civili societate quae bona et firma consequentia colliguntur ex natura, pro divinis legibus erunt habendæ atque colendæ. — *Commentarii in Librum I Politicorum Aristotelis.*

[2] *Ibid.*, in *Opera*, XVI, 424.

fiscating the wealth of the monasteries and pious foundations, he sets up the rather far-reaching doctrine that those who make bad use of their property may be deprived of it by the political authorities. As to liberty, the term is defined as "that condition in which each is permitted to have his own, and citizens are not compelled to act contrary to what is lawful and proper."[1] Liberty in this sense is not to be understood, however, as incompatible with slavery, which also is in harmony with the law of nature. Melanchthon was no less severe than Luther toward the rebellious peasants who sought by force to escape from the condition of serfage in which they were placed by existing laws.

Secular government is, according to Melanchthon, an institution of the law of nature. The Scriptural basis for it is found in the various texts enjoining obedience to rulers; but in addition to those that had played so great a part in mediæval discussion,[2] he lays especial stress on the commandment, "Thou shalt not kill," supplemented by God's declaration to Noah, "Whoso sheddeth man's blood, by man shall his blood be shed."[3]

The characteristic function of civil government is the punishment of offenders by corporal penalties, in order to maintain external tranquillity in the state and promote morality, true religion and proper dis-

[1] "Libertas talis status est in quo suum cuique tenere licet, et nihil contra leges et honestatem facere cives coguntur."

[2] Rom. xiii, 1–7; 1 Peter ii, 15–17; Matt. xxii, 17. *Cf. Political Theories Ancient and Mediæval*, chap. vi, sec. 1, and chap. vii, sec. 4.

[3] Gen. ix, 6.

cipline among the people.[1] Though the secular ruler is limited by natural right, by God's commands and by the laws of the realm, yet the wide scope assigned to the political power affords abundant ground for Melanchthon's contention that the extirpation of false worship and of heresy is a prime feature of the magistrate's duty. For the first object of all government is the knowledge and glory of God, and hence the first function of the magistrate is to promote the true and destroy the false forms of worship and doctrine.[2] But since Melanchthon consistently maintains that the sphere of the secular power is limited to external relations and excludes that which is only spiritual, he puts his argument for the power of the state over heresy on the ground of power over blasphemy. Not the inward belief, but the outward expression of it, is the basis of the magistrate's action. Moreover, in doubtful cases the determination as to what is heretical and blasphemous must be made, not by the magistrate, but by a board composed of specially qualified persons, both lay and clerical.[3] An ecclesiastical council, thus, is Melanchthon's ultimate organ for deciding matters of faith and discipline — and a council which he expressly declares must be neither monarchic nor democratic, but aristocratic in composition and character. But though the

[1] *Philosophiæ Moralis Epitome*, in *Opera*, XVI, 117.

[2] *Opera*, XVI, 119 *et seq.*

[3] This was the character of the consistories, which in the Lutheran churches took over much of the jurisdiction which had belonged to the bishop's court in the old system. *Cf.* Gieseler, Vol. IV, Div. I, part ii, chap. ii.

authority of the secular ruler is nominally subject to the judgment of such an ecclesiastical organ, there are some offences so obviously scandalous as to require direct and unhesitating action by the magistrate, and in this category Melanchthon includes masses for the souls of the dead, the worship of saints, vows of celibacy, and other characteristic rites of the Catholics.[1]

This position of Melanchthon in reference to heresy is sustained by a principle upon which he lays great stress, namely, that while the function of the civil authorities is limited to the care of external relations and interests, it is by no means limited to relations and interests that are merely material. To use his own reiterated expression, the duty of the ruler is to care not only for the good of the belly but also for the good of the soul.[2] Nor does this confuse the functions of magistrate with those of minister of the Evangel. The latter has for his task to teach the Word of God and to mould men's spirits into conformity therewith; while the former is to maintain those outward forms and actions which manifest respect for God. For the same end, thus, the glory of God, church and state coöperate by two distinct means.

This doctrine as to the scope of secular power is

[1] The enormity of these offences is apparent, he says, to all, "qui non sunt aut prorsus Epicurei aut prorsus stolidi." "Epicurean" was the term by which both Luther and Melanchthon commonly designated the extreme rationalists of the day. *Opera*, XVI, 98.

[2] Sentiendum est politias divinitus . . . constitutas esse non tantum ad quærenda et fruenda ventris bona sed multo magis ut Deus in societate innotescat et æterna bona quærantur. — *Opera*, XVI, 91–92.

not much different from the mediæval dogma that it was the duty of government to promote the true faith in accordance with the bidding of the church. Practically, however, in the Lutheran countries the relation of the two powers became the precise converse of that of the Middle Age, and the church subsided into insignificance beside the secular authorities.

As to the form which the political organization should take, Melanchthon has little to say. God approves any form that does not contravene the law of nature. Incidentally to the study of Aristotle's classification of monarchies, Melanchthon considers the theory of universal empire and summarily rejects the idea that either pope or emperor ever ruled over the whole world. From both Scripture and profane history he draws the conclusion that the normal order of things is the existence of many kingdoms subject to independent rulers. Because kings have always tended to become tyrants, various devices have come into existence for limiting royal power. Laws have been set up to hedge the monarchs about, and ephors, electoral princes and parliaments have been made coördinate with them; but none of these methods has been effective. Most efficient have been, he thinks, the restraints of religion, and it is for this reason that the ecclesiastical authority of the bishops has been built up. But this authority, he reflects, is the clay that was mixed with the iron in the vision of Belshazzar.[1]

As to the subjects of divinely established monarchs,

[1] *Opera*, XVI, 440.

Melanchthon's teaching, like Luther's, is that of passive obedience in the fullest sense. Not even impious rulers are to be resisted. Wycliffe's doctrine, that only those who have the Holy Spirit in their hearts can possess lordship, is subjected to elaborate refutation. Yet Melanchthon, like Luther, weakens a little before the idea of the tyrant. Inspired by the pagan classics, he recognizes the right of tyrannicide as against a private individual seeking to seize political power by force, or a magistrate who is atrociously and notoriously oppressing his subjects. But if the oppression and wrong, in the latter case, be not notorious and indisputable, it is the duty of the citizens to submit.[1]

While Melanchthon maintained in public, throughout his life, his teachings as to the divine right of princes and the duty of passive submission on the part of subjects, his private correspondence shows that he was painfully conscious of the selfish and oppressive use which even the Protestant princes were making of the powers which were recognized as belonging to them. He realized that a powerful restraint had been removed from the arbitrary will of the monarch by the destruction of the ancient system of ecclesiastical authority, and he even suggested the wisdom of restoring the jurisdiction of the bishops,[2] although their powers had constituted one of the

[1] *Opera*, XVI, 105. Melanchthon thinks that Cæsar was not justly slain.

[2] Utinam, utinam possim non quidem dominationem confirmare sed administrationem restituere Episcoporum. — Letter quoted in Gieseler, Vol. IV, p. 529, note.

chief grievances that had led to the Reformation. It is evident also that Melanchthon considerably modified his views as to the excellence of monarchic government, and turned with more confidence to the aristocratic organization of the free imperial cities, which were most prosperous in his day. In them he seemed to see hope of the redemption of Germany from the rapacity and oppression of the princes.[1]

4. *Zwingli*

The importance of Ulrich Zwingli, the Swiss Reformer, from the standpoint of political theory, is not great, and such as it is, it appears rather in the method through which the new faith and practice were actually introduced than in the doctrines on which they rested. Theologically the differences between the Zwinglian (or Reformed) and the Lutheran (or Evangelical) creed were sufficient to prevent a united front against the Roman system; but the dogmas which interposed an insuperable barrier to union were not those which had any bearing on politics. Still it is hardly doubtful that some influence was unconsciously exerted by the marked differences in political institutions between the monarchic states of North Germany, where the Lutheran doctrine prevailed, and the aristocratic Swiss cantons and imperial cities of South Germany, which were the bulwarks of the Reformed creed.

Zwingli's personal work in transforming creed and worship in Zürich was almost as much political as

[1] Hagen, *Melanchthon als Politiker, passim.*

theological. His learning, eloquence and energy won for him a predominant influence upon the policy of the canton; and accordingly the abolition of the Roman and the introduction of the Reformed faith and practice were effected through the agency of the established governmental organs. Zwingli was not himself a member of the assembly in which the supreme power was vested, but his opinions, as set forth in sermons and in pamphlets, were almost invariably adopted and enacted into law.[1] This fact determined the Reformer's view as to the normal relation of spiritual to secular organization. At the outset he does not seem to have contemplated the assumption of ecclesiastical functions by the state; his theory as to the distinction in kind between spiritual and secular institutions and authority was not essentially different from that of Luther.[2] But when the government of Zürich gradually took to itself the regulation of worship and incorporated Zwingli's teachings in the law of the land, he acquiesced in and defended the accomplished fact.[3] The church he regarded as only the invisible communion of the saints, while whatever regulation was necessary for the ordering of worship and discipline was a function of the secular organs of each community. So far as an external agency was required in relation to spiritual life, the civil government filled the want. The

[1] Jackson, *Zwingli*, chap. x, *passim; cf.* also the Introduction, by Professor J. M. Vincent, pp. 38 *et seq.*

[2] See the treatise, *Von der göttlichen und menschlichen Gerechtigkeit*, in modern German in Christoffel, *Zwingli, Ausgewählte Schriften*, p. 313.

[3] Stähelin, *Huldreich Zwingli*, I, 455 *et seq.*

Zwinglian system, thus, blended state and church in a single organization. The community (*gemeinde*) determined for itself, through its constituted authorities, the form and manner of its spiritual life as well as the rules which should control its mere physical existence.

This method of adjusting the relations of the two species of authority was not ill adapted to the Swiss community, where a fair degree of equality in social and economic conditions prevailed and religious belief tended naturally to uniformity. But it involved no different attitude from that of the Lutherans in reference to the relation of subjects to magistrates or in reference to the treatment of heresy. Zwingli taught the duty of passive obedience on the part of subjects, and the toleration of difference in belief only so far as the teachings of the Scriptures were not contravened. But Zürich itself, under his leadership, refused to find in the Scriptures what was found there by the Anabaptists, and persecuted these sectaries with fire and sword; and Zwingli lost his life in an attempt to prevent the Catholic cantons from enforcing their views of the Scriptures upon adherents of the Reformed faith.[1]

The Swiss Reformer did not live to rise above the Swiss point of view. It will always be his greatest title to fame that he founded the creed and inaugurated the movement which won the support of a mind of greater breadth and vastly greater power than his — the mind of the Frenchman, John Calvin.

[1] Jackson, *Zwingli*, p. 302.

5. *John Calvin*

The distinctive work of Calvin was that of giving to the Reformed faith a system of doctrine so comprehensive, so logical, and so closely articulated and coherent as to meet on equal terms the system which had been developed into symmetry and unity by centuries of thought and tradition in the Roman church. While Luther was the theologian, Melanchthon the philosopher and Zwingli the politician, Calvin was distinctly the lawgiver of the Reformation. He was trained to the law and he was a Frenchman; by these two facts may be explained in large measure the admirable qualities of method and form which secured so wide an influence to his writings. His *Institutes of the Christian Religion* was designed as a complete guide to the soul that sought to live according to God's Word; and it furnished, indeed, a much safer resort, in many respects, than the Bible itself. For Calvin, like the other great leaders of the Reform, greatly dreaded the fanatics who derived from the Scriptures revolutionary social doctrines, and he shaped an interpretation that was based on the jurist's postulates of order and authority.[1] In his teaching, moreover, there was nothing of the confusion and inconsistency that appeared among the different books of the Bible and among the different works of the old theologians. The *Institutes* presented a marvellously clear, straightforward and

[1] For the circumstances under which the work was produced, see Stähelin, *Calvin*, I, 57 *et seq.*

harmonious exposition of a system complete and intelligible in all its parts, from the initial conception of the Christian God to the last injunction of obedience to the earthly magistrate.

Calvin's doctrine on the subjects of political import is contained in Book IV of the *Institutes*.[1] It embodies, first, a clean-cut rejection of the Zwinglian idea that state and church are united in a single organization. The spiritual mission of the church requires, according to Calvin, a system of government and discipline adapted to its peculiar character. This system must be wholly distinct from that required by secular ends; and he argues temperately, but powerfully, on the familiar lines of the German Reformers, for an ecclesiastical jurisdiction that shall exclude every element of merely secular concern, shall end with the penalty of excommunication, and shall be vested in an assembly of the elders, as in the primitive days of Christianity.[2]

Secular government, however, is no less necessary than ecclesiastical. Calvin has no patience with those fanatics "who would have men live pell-mell like rats in the straw,"[3] or, on the other hand, with the parasites of royalty who say that the king's authority is above that of God. Civil government, he holds, is as indispensable to men as food and clothing, and the authority of a magistrate is the most sacred and honourable of all things pertaining to mere mortal

[1] This constitutes Vol. III of the translation by Beveridge, published by the Calvin Translation Society, 1846.

[2] *Institutes*, Bk. IV, chap. xi. [3] *Ibid.*, chap. xx, par. 5.

life. The objects of civil government include the assurance of physical existence to men, the preservation of order, property and liberty, and especially the exclusion of idolatry, blasphemy and calumnies against truth from among the people; or, as he sums up the matter, "that a public form of worship may exist among Christians and humanity among men."[1] As to the particular forms of organization, Calvin thinks that there is little to choose as between monarchy, aristocracy and democracy, though the aristocratic type seems to have the most in its favour.[2] All political institutions vary properly according to times and circumstances, and all are good that conform to the requirements of equity.

The duty of the secular rulers begins with the care of piety and religion. There is no room in Calvin's system for the theory that the magistrates should confine themselves to the administration of mere human justice; "as if God," he says, "had appointed rulers in his own name to decide earthly controversies and omitted what was of far greater moment, his own pure worship as prescribed by his law."[3] It is only turbulent agitators, seeking to turn the world upside down, that would deny to civil

[1] *Institutes*, Bk. IV, chap. xx, par. 3.

[2] "I, for my part, am far from denying that the form which greatly surpasses the others is aristocracy, either pure or modified by popular government. . . . This has already been proved by experience and confirmed also by the authority of the Lord himself, when he established an aristocracy bordering on popular government among the Israelites, keeping them under that as the best form until he exhibited an image of the Messiah in David."—*Ibid.*, par. 8; *cf.* pars. 14–16.

[3] *Ibid.*, par. 9.

authority the power to avenge violated piety. After this primary function, the magistrates are bound to provide for the peace and safety of the state. To this end Calvin vindicates for the civil authorities the right to inflict capital punishment, to carry on war, and to raise money by taxation — all subject to the prescriptions of justice and right reason. Christians are bound to sustain the established government in these ends. There is no sense, Calvin argues, in the claim that the Mosaic law alone is entitled to the respect of the pious, or that God's people cannot properly have recourse to the courts to maintain their rights. The Mosaic law, in its ceremonial and political aspects, was adapted to Jewish conditions only, and is in no way requisite to modern Christian life; and the employment of existing agencies to maintain the right and punish the wrong is not only permissible, but even meritorious, in the righteous.

Finally, Calvin rounds out his teaching with an elaborate exposition of the duty of passive obedience to established authority. Here, as throughout his work, he does not flinch from the extremest deductions that flow logically from his premises. Thus, he declares:

> Even an individual of the worst character, one most unworthy of all honour, if invested with public authority, receives that illustrious divine power which the Lord has by his Word devolved on the ministers of his justice and judgment, and accordingly . . . in so far as public obedience is concerned, he is to be held in the same honour and reverence as the best of kings.[1]

[1] *Institutes*, Bk. IV, chap. xx, par. 25.

And again:

> We will never entertain the seditious thought that a king is to be treated according to his deserts, and that we are not bound to act the part of good subjects to him who does not in turn act the part of a king to us.

The business of the subject is to do his duty and to leave to God the punishment of kings who fail to do their duty. This attitude is not required, however, of public officials whose explicit function it is to curb the power of monarchs. Ephors, tribunes and such magistrates are guilty of perfidy if they fail to restrain tyrannical tendencies in their kings, and Calvin adds, with the conditions of France and England doubtless in his mind: "Perhaps there is something similar to this in the power exercised in each kingdom by the three orders, when they hold their primary diets."[1] In this reference to the limited monarchy Calvin suggests, as Luther had done,[2] that questions of resistance to princes may properly belong in the field of public law. Add to this the explicit declaration of Calvin that the limit of obedience to kings is the command of God,[3] and the groundwork is laid for the practice of the half-political, half-religious, but undoubtedly vigorous, resistance which his followers in France, the Netherlands and elsewhere substituted for that of passive obedience.

Such were the leading features of Calvin's political

[1] *Institutes*, Bk. IV, chap. xx, par. 31.

[2] *Supra*, p. 14.

[3] "If they [the rulers] command anything against Him [God], let us not pay the least regard to it, nor be moved by all the dignity which they possess as magistrates."—*Institutes*, IV, xx, 32.

theory. The influence of his system cannot be properly understood, however, without some consideration of the application made of it by its author in his celebrated régime at Geneva. In this city-state, which had just freed itself definitively from the danger of absorption by Savoy and also from the Catholic church, Calvin settled after he was obliged to leave France. His theological power, moral earnestness and political insight were peculiarly adapted to bring order out of the chaotic social conditions that had been left by the recent upheaval, and he quickly won recognition as the regenerator of the republic. Though at first the system which he introduced aroused serious opposition, so that he was banished, nevertheless he proved indispensable and was ultimately recalled without objection. Then, in 1542, he carried through the ecclesiastical and political reorganization which made Geneva celebrated throughout the world, and afforded a model for government wherever Calvinism gained the ascendency.

The system was theocratic in principle and aristocratic in operation. The citizens of Geneva, as a community, constituted at once a church and a state. As church they were organized in (1) the board known as the Venerable Company, consisting of the ministers and professors of theology, and (2) the Consistory, made up of the ministers, together with twelve elders chosen by the chief administrative council of the city out of its own members. These two boards managed respectively the worship and the moral discipline of the community; and their aristocratic character

appears in the fact that the ministers, whose influence in both boards was supreme, were chosen by the Venerable Company itself, with mere confirmation by the body of the people. The church government was thus a self-perpetuating oligarchy. As state the population was organized in a series of councils, so correlated that the chief power lay in a board of twenty-four, on whose membership the mass of the people had but very slight influence.

More significant than the forms of organization was the code of morals and law which these organs administered. Calvin's disciplinary rules for Christian living, enforced by the Consistory, embodied the most rigorous system of Puritanism. The frequency and form of church services were minutely prescribed and attendance was compulsory; the substantial as well as the incidental features of marriage were closely regulated; jewellery and long hair were prohibited, gay colours and new fashions in clothes were banned,[1] and the luxury of banquets and like entertainments was put under careful restrictions. All deviations from the ascetic ideal entailed fines and public humiliations, and the members of the Consistory were required to maintain a relentless visitation and search of homes to find out and punish infractions of the code. But besides this ecclesiastical jurisdiction the secular magistracy enforced a criminal code of Draconian severity, in which blasphemy was punishable by burning at the stake, and frivolity in

[1] Red was especially forbidden, and a tailor could introduce a new style only with consent of the authorities.

speech or action, cruelty to animals, and reading improper books entailed penalties that were not light. Moreover, obstinate and incorrigible offenders whom the Consistory could not adequately deal with were in last instance punished by the civil arm. Under this power Servetus, the former friend of Calvin, was with the latter's full approval put to death for heresy and blasphemy.

The Genevan constitution was not entirely true to Calvin's theory. The Consistory, for example, though an ecclesiastical organ, was partially dependent on a secular organ for its membership, and thus the principle of absolute separation of the two governments was violated. In operation, too, the harmony which would spring from a clear delimitation of jurisdictions was never realized. Only by the personal power and influence of Calvin himself was the system preserved from destruction, and this end was achieved through the gradual but sure relegation of the secular organization to the position of a subordinate and inferior element. The conflict of "the two powers" repeated in the Swiss city-state the mediæval experience of the Holy Roman Empire, and Calvin dominated Geneva in a sense not widely different from that in which Innocent III had dominated Europe.

6. *Summary*

The foregoing sketch of the teachings of the great Reformers reveals how completely the trend of their influence on political theory was opposed to that of Machiavelli. In their method and point of view the

rationalizing, unmoral and unreligious spirit of the great Italian had no place, and his exclusive appeal to pagan history was repudiated. However profoundly they were affected by the currents of the Renaissance, their ethical and political theories were in the strictest sense mediæval and scholastic. The postulates, the categories and the scope of their systems were identical with those recognized by Aquinas, and in the case of Melanchthon, especially, the formal syllogistic method of the Schoolmen was frequently employed. To the Reformers the relation of church to state and the moral basis of the latter constituted practically the whole of political theory; and in the treatment of these problems they merely developed the doctrines which had been set forth by Marsiglio, Ockam, Gerson and Cusanus.

But this development involved, of course, a recognition of the progress in external conditions that distinguished the sixteenth from preceding centuries. Despite the temporary revival of the imperial tradition under Charles V, the outcome of his reign emphasized that disintegration of the Empire which corresponded with the atomizing theories of the Reform. For the rejection of papal supremacy and the assumption of ecclesiastical jurisdiction and control by various communities, great and small, signified the completion of the same process in the church that had been practically and theoretically completed some time before in the Empire. Hence the Reformation, with all its dependence on mediæval methods of thought in politics, was entirely free

from those potent concepts — universal empire and universal church.[1] It allied itself, more perhaps on practical than on theoretical grounds, with the national idea which had already received extensive recognition in the leading monarchies of Europe.

The doctrine of the divine character of secular government, which was propounded by all the great Reformers, was substantially identical with that which had been held in the early Christian church, in the dogma of the two powers, but had been much obscured in the later Middle Age through the exaggeration of ecclesiastical power and prestige. By the teaching of the Reformers the dignity of rulers and magistrates was put on the most explicit assertion of God's sanction. This gave a decided impetus to the projects of ambitious princes, despite the occasional denunciation of their personal characters and methods.[2] The most conspicuous result of the Reformers' teaching, however, was the exalted conception of the excellence bestowed by God upon the elect — upon those whom he had chosen from all eternity to be his saints. This conception promoted diametrically opposite political tendencies in Lutheran and in Calvinistic lands. In the former, which were mostly monarchic, it confirmed the practice of passive submission, by the emphasis which it laid on the ineffable bliss of salvation as compared with any

[1] That is, universal church in the sense of a single ecclesiastical organization. The concept of the church universal as the general body of the elect still endured.

[2] *Cf.* Luther, *supra*, p. 13.

superiority in the gross conditions of material life. In the latter, where aristocratic institutions commonly prevailed, the effect of the conception was to justify the utmost extension of political authority, on the ground that the divine inspiration of the elect gave absolute validity to any species of activity which they might direct. Thus in monarchic lands the tendency of the Reform was to enhance the hold of the monarchic principle and in aristocratic governments to confirm the principle of aristocracy. In both the effect was to strengthen absolutism in the political sovereign.

This effect was in no wise diminished by the fact that in respect to the relation of the secular arm to heresy the doctrine of the Reformers differed little, if at all, from that of the Catholics. As we have seen above, both Lutherans and Calvinists agreed that the government must exterminate heretics, and Calvin himself had participated in the prosecution of Servetus, which had produced a profound sensation throughout Europe. The discussion that was aroused by this tragic incident produced a well-rounded theory of religious toleration,[1] but neither branch of the Reformers showed any sympathy with it, and Theodore Beza, the devoted satellite of Calvin, wrote a formal and elaborate refutation[2] of the theory, with a demonstration of the righteousness and necessity of the capital punishment of heretics by the civil mag-

[1] By Sebastian Castalion. See Janet, *Histoire de la Science Politique*, Vol. II, pp. 16 *et seq.*, and 51.

[2] Analyzed at length by Janet, *loc. cit.*

istrates. When it is borne in mind that in practice, if not in theory, the ultimate authority to decide in what heresy consisted lay, in Protestant countries, with the government, the bearing of the Reformers' doctrine is obvious.

Through the influences thus developed Protestant peoples were subjected to an increasing pressure of governmental authority and at the same time deprived of the check upon this which, with whatever qualifications and inconveniences, had been in fact exerted through the papal jurisdiction. The possibility of oppression — and indeed the actuality of it — came early into the consciousness of the Reformers, and we have seen the manifestation, especially in the Lutheran doctrines, of a tendency so to define a tyrant as to qualify the duty of passive obedience. Melanchthon had, by his exposition of the law of nature, given to Protestants the same basis for judging government that had been possessed by the ancient pagans and the mediæval Catholics. But it was left for the followers of Calvin, with their peculiarly strong sense of the sanctity of the elect, to extend to monarchic lands that conception of the rights and dignity of the saints that had been realized in the aristocratic polity of Geneva. In France, in the Netherlands, in Scotland and in England they worked out and applied a system in which the chosen of God should be secure in their secular rights and privileges, passive submission should have well-defined limits, and monarch and subject alike should be controlled by a higher law.

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CHAPTER II

ANTI-MONARCHIC DOCTRINES IN THE SIXTEENTH CENTURY

1. *The Religious Wars*

When in 1564 Calvin, the last of the quartette of great Reformers whom we have considered, passed away, the conditions and influences were clearly discernible which were to give character to the dramatic history of western Europe during the next half-century — the period of widespread civil and international warfare in which difference in religious creed marked the line of division between the combatants. Philip II, well settled as successor of Charles V in Spain and the Netherlands, was manifesting his purpose to rule as absolute sovereign throughout all his possessions and to crush Protestantism wherever it existed. In England, France and Scotland three women, despite John Knox's frantic demonstration of the iniquity of such a thing,[1] held the reins of political power — Elizabeth, persecuting Calvinists as well as Catholics, yet already the mainstay of Protestantism against Philip; Catherine de' Medici, Catholic if

[1] See his *First Blast of the Trumpet against the Monstrous Regiment of Women.*

anything by conviction, but wholly Machiavellian in her employment of religion to aid her in wielding the authority which rested nominally in her weak and incapable son, Charles IX; and finally, Mary, Queen of Scots, a passionate French girl, struggling by girlish methods — with "owlings and tears," as John Knox described it — to assert for herself some small measure of the rights of a sovereign against the violent nobles and the grim Presbyterians who denied to her either political or religious independence.

In Spain and in England there was no civil war during the period we are considering. Philip and Elizabeth alike knew how to assert and enhance a monarchic authority that should be secure against resistance. Absolutism in each case rested upon national feeling: the Spaniards submitted to Philip through pride in the greatness of his power, and the English supported Elizabeth through fear of this same power. Autocracy was an undisputed fact in both countries, and, by virtue of this condition, amid all the literary activity that characterized the period, political theory, as is usual in the time of absolutism, received practically no attention in England and Spain.[1] Quite different was the case in France, Scotland and the Netherlands. In each of these lands civil war was chronic during the last half of the sixteenth century,

[1] Mariana, whose work is considered below, wrote just at the end of the reign of Philip II; and moreover, Mariana's work was conspicuously exceptional. For jurisprudence, however, this period was most glorious in Spain. See *infra*, chap. iv.

and in each appeared striking contributions to political philosophy.

The civil wars in France were rather political than religious in their origin. Under Francis I and Henry II the Protestants, or Huguenots, as they had come to be called, had been subjected to severe persecution, but had nevertheless increased enormously in number. Their attitude toward the royal authority had been consistently submissive, according to the teaching of Calvin and the other leaders. But as their doctrines won converts among the higher social classes, especially in the flourishing towns of the southwest, it became increasingly difficult to enforce the penalties provided for heresy. After the death of Henry II and of his short-lived son, Francis II (1560), the extinction of the House of Valois began to be anticipated; and this fact brought to a crisis the long-standing rivalry of the two noble houses, Guise and Bourbon, who sought to control the throne and eventually the succession to it. By tradition and policy the Guises were strictly Catholic, while the Bourbons, through their connections with Protestant Navarre, were affiliated more or less with the Huguenots. Hence the degree of tolerance to be extended to the latter sect was the nominal issue under cover of which the two factions of the aristocracy fought out their rivalry for supremacy in the state. The net result of the struggle, which lasted, with short intervals of truce, from 1562 to 1598, was the ascription of well-defined civil and political rights to the Huguenots by the Edict of Nantes.

Of all the incidents of treachery and assassination in which the conflict abounded, that which created the most profound sensation and did most to enlist and divide the sympathies of the outside world on purely religious grounds, was the massacre of St. Bartholomew's day, 1572. This terrible deed, in the mind of its originator, Catherine de' Medici, was intended merely to relieve her of the unpleasant domination of the Huguenot chiefs, Coligny and others, who happened at the moment to have an advantage over the rival faction. To the world at large, however, the massacre appeared an attempt to exterminate the Protestants; and because of this belief the contending factions in France were thereafter faithfully sustained by Philip and Elizabeth respectively and were regarded as protagonists of the two creeds. Under Henry III, who succeeded his brother Charles IX in 1574, the Catholic party found an organization in the famous League, of which the Duke of Guise was the chief and which received the support of Philip II's treasure and arms till its power was broken at Ivry by Henry of Navarre. Against the League the struggle of Henry III for the retention of the royal prerogatives was as violent and unscrupulous as had been that of the queen-mother and Charles IX against the Huguenot chiefs. The Duke of Guise was assassinated by royal order in 1588 as Coligny had been in 1572, and Catholic Europe looked upon the author of the later deed as Protestant Europe had looked upon the author of the earlier. Less than a year after the chief of the League had fallen Henry

III himself died by an assassin's hand, and the House of Valois came to an appropriate end. Then appeared in the open the secret purpose of Philip II to make France subject to himself, under cover of the religious issue, and the national spirit of the French, vigorously asserting itself, brought about the succession of the Bourbon line in the person of Henry IV.

Meanwhile Scotland had been the scene of a series of convulsions in which political and religious influences had been no less thoroughly commingled than in France. From 1561 to 1567 Queen Mary had been the head of the Catholic faction of the nobles, though her efforts to assert for herself some of the prerogatives of actual royalty met with no success, since the Scottish lords never allowed any consideration to outweigh the maintenance of their ancient independence as against the crown. When Mary's extraordinary matrimonial exploits had resulted in her deposition, the custody of the infant James VI, her son, and the conduct of the regency became the centre of the war of factions. Protestantism substantially triumphed over Catholicism; but after the death of John Knox the Calvinistic and Presbyterian system which he had installed had a hard struggle against the Episcopal tendencies which ultimately proved most attractive to the king himself. Many of the most serious sources of confusion in Scotland were removed by the arrangement through which James, after the execution of his mother, became the recognized heir to the English throne, but the antithesis of Presbyterianism and prelacy remained as an

issue on which the feuds of the nobles could be fought out, and it produced its perfect result in the reign of James's son.

More intimately connected than the affairs of Scotland with the general movement of events was the desperate conflict in the Netherlands by which the United Provinces established their independence of Spain. Here, too, the origin of the trouble was rather political than religious. Philip II introduced into the Netherlands the autocratic administrative methods which he employed in Spain. They were in most pronounced conflict with various rights and privileges secured to the different provinces by long-standing charters, and to this grievance was added the fact that the ancient native aristocracy was displaced in influence by Spanish officials. Very prominent in the new policy of Philip was the greatly increased activity of the Inquisition. Calvinism had become strong in the Netherlands, especially among the lower classes of the people. Under Charles V the punishment of heretics[1] had been systematically carried on, and the number of persons executed had reached very great proportions; but there had been no tendency to resistance among the victims. Now, however, the announced purpose of Philip to extirpate the heretics and the fear that the summary and drastic methods of the Spanish procedure were to be

[1] The suppression of the Anabaptists in Westphalia caused a great influx of these fanatics into the Netherlands, and the victims of the Inquisition at this time included many of these fugitives and many natives who had imbibed their doctrines.

introduced, caused a serious agitation among the lower classes, and brought them into harmony with the *bourgeoisie* and nobility, whose grievances were of a primarily political character. In the early years of the reign the hostility to the new régime was expressed in animated protests by the aristocracy and in a number of popular tumults. Philip's response was the despatch of the Duke of Alva with a Spanish army to govern the disaffected region. The result of Alva's ruthless policy was that sporadic murmuring and riots became systematic insurrection, headed by William of Orange and supported by all the Protestant — especially the Calvinistic — powers of Europe. From the outset the limits of the rebellion were pretty clearly marked by the predominance of the Reformed faith, and in the various phases of the long struggle the decisive obstacle to a reconciliation proved to be the invincible resolution of the king never to tolerate the Protestant faith and worship. Accordingly the final repudiation of Philip's authority in 1581 was carried out by the northern provinces only, where the population had very generally accepted the doctrines of Protestantism, and the Dutch Republic entered upon its career through a clean-cut application of the theory that denial of religious liberty constituted such tyranny as justified the deposition of the tyrant.

Thus before the end of the sixteenth century the creed of Luther and Calvin, despite the pacific teachings of the Reformers themselves, had by force of circumstances become a decisive factor in the political

transformation of the chief powers of Europe. Protestantism in consequence assumed a militant aspect, and out of the turmoil theories of Christian duty in the state were developed that bore little resemblance to the ancient ideal of passive submission to established authority. To explain the proceedings and the triumphs of the French, the Scottish and the Dutch Calvinists, a thorough and aggressive overhauling of political dogma was required. Some of the chief works by which this was effected must now receive our attention.

2. *The Vindiciæ contra Tyrannos*

The controversial literature which was produced in France by the religious wars included many violent anti-monarchic works by Catholic as well as by Protestant writers. The latter found their chief inspiration in the affair of St. Bartholomew's, the former in the abandonment of the League and the assassination of the Guises by Henry III. So far, however, as philosophical foundation and general principles were concerned, the Catholic and the Protestant debaters were substantially on common ground. Both alike justified resistance to a French king on the general principle that under certain circumstances a king became a tyrant and hence an outlaw, and on the particular principle that under the French constitution the monarch was subject to pretty well defined limitations. Among the earliest and most influential demonstrations of both these principles were the two Huguenot works: *Franco-Gallia*, by the distinguished

jurist, Francis Hotman, and *Vindiciæ contra Tyrannos*, published under the pseudonym of Stephanus Junius Brutus and written probably by either Hubert Languet or Duplessis-Mornay. To these works, and especially the latter, our attention may be confined.[1]

The *Franco-Gallia*, published in 1573,[2] limited itself practically to the demonstration that France was never, in its constitutional origins, an absolute monarchy; but that, on the contrary, a general assembly of the nation had exercised the highest political powers throughout the early history of the Franks, and during the Merovingian, the Carolingian and the later periods. Hotman's historical erudition was very great, and he massed with powerful effect the quotations that he gathered from the ancient chronicles to show that kings were chosen and deposed, legislation was enacted, and all the most important political business was transacted in the annual public council of the Franco-Gallican state. But the work did not go into the field of general political theory and affected the development of that system of thought only by suggesting and illustrating the applicability of the historical method to the questions at issue.

Of an entirely different character was the *Vindiciæ contra Tyrannos*, or *The Grounds of Rights against*

[1] Prominent among the Catholic anti-monarchic works in France were: Boucher, *De justa Henrici III abdicatione;* Rossæus, *De justa reipublicæ Christianæ in Reges impios et hæreticos auctoritate.* See Janet, *Histoire de la science politique*, II, 82 *et seq.;* Treumann, *Die Monarchomachen;* Hallam, *Literature of Europe*, Vol. II, chap. iv.

[2] I have used an English translation published in London, 1738.

Tyrants.[1] This embodied a most comprehensive treatment of the foundation of monarchic authority, and presented from the Protestant point of view a doctrine which radically transformed the attitude that had been taken under the instruction of the leading Reformers. The work is systematic as well as comprehensive, and the style exhibits that same glowing quality which marked the expression in St. Bernard, some centuries earlier, of the best traits of the Gallic temperament through the medium of the Latin language exquisitely handled.

The *Vindiciæ* answers four questions, of which the first is: Whether subjects are bound to obey a prince who enjoins what is contrary to the law of God. To this a negative answer is obvious, based on the positive injunction of the Scriptures, on the incidents of the procedure through which Saul was set up as king over Israel, and, incidentally, on the analogy of the feudal relationship, under which a vassal is bound to obey the superior rather than the inferior lord in case their commands are in conflict.[2] This answer is not different from that which had been given by Luther and Calvin.

The second question is not of the right to disobey, but of the right to resist: Whether it is lawful,

[1] Published in Latin in 1579 and often thereafter. I have used the edition of 1595, annexed to a Latin version of Machiavelli's *Prince.*

[2] "Reges omnes Dei vassallos esse, omnino statuendum est. . . . Si Deus est domini superioris loco, rex vassalli, quis non domino potius quam vassallo obediendum pronunciet? Si Deus hoc præcipit, rex contra, quis regi adversus Deum obsequium denegantem rebellem judicet? . . . ergo non modo non tenemur obedire regi, contra legem Dei quid imperanti, verum etiam si obediamus, rebelles sumus."

and if so, to whom, in what manner, and to what extent, to resist a prince who is violating the law of God and laying waste the church.[1] The answer to this question presents formally and completely the theory of contract as determining the reciprocal rights and duties of God, king and people, and presents the theory in such form as to exhibit perfectly the two sources of this celebrated doctrine of politics — Old Testament history and the Roman law.

It is assumed at the outset, in the long familiar manner, that the relation of God to the people of Israel must be accepted as the type of his relation to every Christian people. But the controlling principle in the Old Dispensation was covenant or contract (*fœdus*). God chose Israel as his peculiar people, and they on their part agreed to maintain his exclusive worship.[2] When royalty was set up this covenant was confirmed and renewed. On this occasion the installation of monarchy involved two distinct contracts.[3] The first was that in which God, on the one hand, and the people and king, on the other, engaged to maintain the ancient relation of the chosen people as the church of God; the second was that to which the king and the people were the parties, the former agreeing to rule justly and the latter to obey him. It is under the first of these two

[1] "An liceat resistere principi legem Dei violanti et ecclesiam Dei vastanti: quibus, quomodo et quatenus?"

[2] This contract was made by Israel at Ebal and Gerizim. Deut. xi, 29 and xxvii, *et seq.;* Joshua xxiv.

[3] 2 Kings xi; 2 Chron. xxiii.

contracts that the right of resistance to an impious prince is manifest. King and people are co-contractors to maintain the worship of God; each, therefore, is responsible for the fulfilment of the obligation, and each is authorized to restrain the other from violating it, since the innocent party would participate in the penalty for such violation. The author of the *Vindiciæ* elucidates the situation by copious references to the Roman law, and feels no incongruity in construing the relation of man to his Creator in terms of the rules of the market-place.[1] In the Old Testament history abundant instances are found in which the kings enforced upon the people conformity to their pledge to maintain the worship of God, and quite as many, on the other hand, in which the people constrained the kings to keep the covenant, or deposed them for the failure to do so.

[1] The contract, he explains, is like that in which a creditor is secured by the joint and several obligation of two or more debtors. "Videtur Deus fecisse quod in dubiis nominibus creditores facere solent, ut plures in eandem summam obligentur." The fact that the people is a party to the covenant is evidence that the people is not regarded by God as in that servile condition to which the courtiers assign it; for according to the Digest a slave is incapable of contracting. But perhaps the most interesting instance of the author's preoccupation with the Roman law is to be found in his comments on the death of Saul. The king's destruction is explained, of course, as the penalty of his failure to keep the covenant with God. But why, the author asks, was his army, *i.e.* the people, also destroyed? It must have been because of their joint responsibility with him. For God would not avenge the sins of a king on his people, or of a father on the son. " Acerbum est, aiunt iurisconsulti, parentis scelera filiorum pœnas lui. Alieni sceleris quemquam pœnas pati iura non sinunt." That is, the author, in following the *iurisconsulti*, forgets God's own words: " visiting the iniquity of the fathers upon the children unto the third and fourth generation."

But the right of the people thus demonstrated, to resist a king who is deviating from his duty to God, is not to be recognized as pertaining to the masses in general. Action can be taken only by the magistrates or the assemblies in whom the power of the people is organized. The multitude as a whole — "that monster with countless heads" — is incapable of action; but in every well-organized realm there are princes, peers, patricians, nobles, *etc.*, normally constituting an assembly whose function is to see to the safety of the state and the church. Private citizens have no right of resistance save in support of the magnates, or by virtue of a special mandate from God.[1] The maintenance of religion, thus, is assigned to the estates of the realm, and the reference that the author makes to the deeds and doctrines of Constance and Basel indicates with sufficient clearness both the source and the conservative character of his theory.

The third question propounded in the *Vindiciæ* concerns the right of resistance on other than religious grounds: Whether and to what extent it is lawful to resist a prince who is oppressing and destroying the state?[2] The answer embodies a complete and systematic demonstration of popular sovereignty by divine right. Royalty, the argument runs, is

[1] But the claim to a special mandate must be most carefully established in order to justify action by a private man: "privatos, ni extra ordinem ad id munus vocatos evidenter appareat, suapte auctoritate arma se capere nullo iure posse."

[2] "An et quatenus principi rempublicam aut opprimenti aut perdenti resistere liceat? Item quibus id et quomodo et quo iure permissum sit?"

merely an institution of convenience for the benefit of the people. God sanctions it to this end. A king never reigns in his own right; he is chosen by God and is installed by the consent of the people.[1] The history of the Israelites, of the ancient Greeks and Romans, and of the French monarchy is shown to establish this principle. "No one is born a king; no king can exist *per se* or can reign without a people. But on the contrary a people can exist *per se* and is prior to the king in time." Even where, as in France, the kingship is hereditary, the essential fact is that the choice of the king is voluntarily limited by the people to a single family.[2] That the essential function of royalty is to provide for the welfare of the people, is obvious from the nature of things.

> It is clear at the outset that men who are by nature free, impatient of subjection and born rather to command than to obey, have not deliberately chosen submission to another and renounced the law of their very nature, as it were, except for the sake of some great advantage.[3]

Taking from Seneca the conception of a primeval "golden age," in which government was unnecessary and no one would have had a crown if he could have picked it up in the street, the author ascribes the origin of the kingship to the necessity for leadership

[1] The whole argument consists in a formal proof that "electionem regis tribui Deo, constitutionem populo."

[2] "Qui vero ex ea stirpe proximi sunt non tam reges nascuntur quam fiunt; non tam reges quam regum candidati habentur."

[3] "Primum sane palam est, homines natura liberos, servitutis impatientes, et ad imperandum magis quam ad parendum natos, non nisi magnæ cuiusdam utilitatis causa imperium alienum ultro elegisse, et suæ quasi naturæ legi, ut alienam ferrent, renunciasse."

that arose when private property began to be recognized.[1] Monarchs were appointed to determine rights at home and to lead armies abroad; but they always remained subject, in their powers and actions, to the end for which they were created. Such being the original character of royalty, it is easy for the author to prove, as he does at length in most eloquent fashion, that the sweeping claims of power made by courtiers (*aulici nostri*) on behalf of kings, especially in reference to property and taxation, are baseless.[2]

The true principle on which to explain the whole relation of king to people is that of the second contract already referred to. This is entered upon between the king, on the one side, and the magnates, representing the whole people, on the other. The form is that of the Roman *stipulatio*, and the people has the part of *stipulator*, which, the author observes, is at law the more advantageous. The people asks of the king whether he will reign justly and according to law; he answers that he will. Thereupon the people pledges itself to yield faithful obedience so long as he keeps his promise. Thus the king contracts absolutely; the people conditionally; hence the failure of the king to fulfil the condition frees

[1] "Cum igitur *Meum* illud et *Tuum* orbem invasissent ac de rerum dominio inter cives, mox vero de finibus inter finitimos, bella exorirentur . . . reges creati sunt ut domi ius dicerent, foris vero exercitum ducerent."

[2] "Statuamus tandem oportet reges patrimonii regii non proprietarios, non fructuarios, sed administratores tantum esse. Cumque ita sit, multo sane minus aut rerum privatarum cuiusque aut rerum publicarum quæ ad singula municipia pertinent proprietatem usumfructumve sibi tribuere posse."

the people *ipso iure* from its obligation. This compact completes the relationship which is inchoate in the first compact of king and people with God.

In the first covenant or pact, piety comes under the bond; in the second, justice. In the one the king promises dutifully to obey God; in the second, justly to rule the people: in the one, to provide for the glory of God; in the other, to maintain the welfare of the people. In the first the condition is, if you observe my law; in the second, if you secure to each his own. Failure to fulfil the first pact is properly punishable by God; failure to fulfil the second, legitimately by the whole people, or by the magnates of the realm (*regni proceres*) who have undertaken to watch over the whole people.

That such is the true foundation of all royal governments is evident, the author holds, from the coronation pledges and oaths that have appeared throughout history;[1] but even without these, it would be manifest from nature itself. Hence the definition of tyranny is easy: the tyrant is he who wilfully disregards or violates the contract through which alone monarchic dominion is legitimate. The usurper, or tyrant *absque titulo*, is an outlaw, and resistance to him is the right of every one, even the private citizen, under natural law, under the law of nations and under civil law. As to the tyrant *exercitio*, that is, the monarch whose title is valid but who has violated the contract with his subjects, the representatives of the people, having assured them-

[1] He dwells with special unction on the famous formula employed by the Justicia of Aragon in the installation of the king: "We, who are as good as you and are more powerful than you, choose you as king," *etc.*

selves that his offences are not due to ignorance, unintentional error or mere incompetence, but are wilful and deliberate, must constrain and, if necessary, depose him. Such is their duty; they stand toward the king in the position of co-guardian (*contutor*), to see that he does not violate his obligation to his ward (*pupillus*), the people.[1] The council of the realm is in the state what the general council is in the church; and as it has been universally admitted that the general council may depose a pope, even though he claims to be king of kings, with how much better warrant may the council of the realm depose a monarch. But private citizens cannot act in this matter. Resistance to the tyrant *exercitio* is the right only of the whole people, with whom, as contrasted with individuals, the governmental compact is made; and the *populus universus* is represented in the one function as in the other by the great council of the magnates.[2]

The fourth question debated in the *Vindiciæ* is: Whether it is the right and duty of princes to interfere in behalf of neighbouring peoples who are oppressed on account of adherence to the true religion, or by any obvious tyranny.[3] The answer is affirmative on both branches of the question, and the

[1] Here the author's anxiety to fortify his doctrine with legal principles leads to a change of base; there is a considerable difference between a *stipulator* and a *contutor*.

[2] "Singulis neque a Deo neque a populo gladius concessus est."

[3] "An iure possint aut debeant vicini principes auxilium ferre aliorum principum subditis, religionis puræ causa afflictis aut manifesta tyrannide oppressis?"

ground is, in the one case the unity of the Christian church, in the other the unity of humanity, involving respectively duty to God and duty to one's neighbour. As the preceding questions are designed to justify the resistance of the Huguenots to Charles IX and Henry III, so this is designed to justify the action of Elizabeth of England and some of the Protestant princes of Germany in extending aid to the struggling Huguenots. And as the doctrine of popular sovereignty is the outcome of the one undertaking, so an enlightened view of international solidarity is strongly presented in the other.

3. *George Buchanan*

The chief contribution to political theory which was due primarily to the Scottish Reformation was Buchanan's work *On the Sovereign Power among the Scots*,[1] published in 1579. John Knox's literary productions were multifarious and influential, but they embodied no general or systematic treatment of politics. Buchanan, however, in the monograph named, undertook a scientific apology for the anti-monarchic proceedings of recent times, especially in Scotland, and dedicated the work, with grim Presbyterian satisfaction, to his royal ward, the young James VI. The central point of the whole subject, Buchanan assumed, was the distinction between king and tyrant, and the elaboration of this distinction is the general theme of the work.[2] In literary form

[1] *De Iure Regni apud Scotos*. Appended to his *Rerum Scoticarum Historia*, Aberdeen, 1762.
[2] *Cf.* secs. 6 and 7.

as well as in content the monograph reflects very faithfully the humanistic erudition of which the author was so famous a master.

Society and government originate, Buchanan holds, in the effort of men to escape from the primordial state of nature, when, as Polybius had described it, they lived the bestial life, without law and without fixed abodes.[1] The impulse to social life came partly from the sense of self-interest,[2] but rather more fundamentally from the instinct of association implanted by nature, or, better, by God. In society thus constituted, the attribute essential to continuous existence is justice, as in the physical man it is health. The function of the king, therefore, is to maintain justice; and Buchanan throughout his work recurs again and again to the Platonic analogy of the true ruler and the skilled physician. But experience teaches men that justice is to be maintained rather by laws than by kings; hence it is that the rulers, originally unlimited in power, have with the development of enlightenment been always subject to law.[3] The maker of the law is the people, acting through a council of representatives chosen from all classes, and the interpreter of the law should be, not the king, but a body of independent judges. Nor is the

[1] . . . tempus quoddam cum homines in tuguriis atque etiam antris habitarent, ac sine legibus, sine certis sedibus palantes vagarentur. — Sec. 8.

[2] He notes very acutely the danger of considering self-interest as the essential principle of social unity; for it may be adapted as well to the dissolution as to the consolidation of a community. *Cf.* sec. 9.

[3] "Regum insolentia legum fecit desiderium."

king even to fill the gaps which are sure to appear in the law from time to time. His function in relation to the law is reduced to the minimum; and yet, Buchanan holds, his task is a most substantial and difficult one, — namely, to maintain the general *morale* of the state by setting before the citizens a high example of rational and virtuous living.[1]

Having evolved this rather vague and visionary concept of the king, the author bodies forth the figure of the tyrant, whose characteristics are expressed with all the rhetorical frenzy that classical literature had rendered conventional.[2] Essentially, however, the tyrant is a monarch who either has obtained his power without the consent of the people, or has exercised it otherwise than in conformity to justice. In the former case he is a mere outlaw — an enemy of the race, and at the mercy of every one; in the latter case, he is by the nature of the office, as set forth above, liable to the people for violation of the law, which is the expression of justice as conceived by the given society. Buchanan controverts with great skill and precision the arguments drawn from the Scriptures for passive obedience to tyrants. St. Paul's injunction of submission to the higher powers is subjected to an especially careful interpretation, the substance of which is that the Apostle was addressing those who were, like the Anabaptists,

[1] Sec. 39.

[2] *Cf.* the description of the tyrant's life, with "horror," "metus," "faces Furiarum," "bellum," and all the rest of the conventional accompaniments.

tending to disregard all social and political institutions, and that the command, therefore, referred to authority in general and not to the persons who at any time exercised the authority.[1] In view of this construction of the injunction to obedience, together with the express command of the Lord that the wicked be cut off and removed out of the midst of the people, Buchanan's conclusion is that a tyrant may be slain with impunity.[2]

The whole basis of the relation between king and people, particularly in the Scottish realm, is summed up, Buchanan holds, in the terms of a contract. A hereditary right to exercise royal power has been granted by the people, but it is not in human nature that such power be given and obedience pledged without some consideration,[3] and the consideration in this case is the promise to conform to justice and law in the exercise of the power. Violation of the terms of the pact by either party dissolves the bond and releases the other party from further obligations. But the king whose conduct has such an effect and who thus promotes the destruction of human society becomes a tyrant and an enemy of the people, and is

[1] Secs. 60–70. Paul, he says, wrote just what would be written now to the Christians living under the rule of the Turks — to submit to overwhelming force in the interest of peace, though without any implication that the Turkish power is in the true sense legitimate. — Sec. 70.

[2] Secs. 53–56, 86.

[3] Habet humanus animus sublime quiddam et generosum natura insitum ut nemini parere velit nisi utiliter imperanti; neque quicquam est valentius ad continendam humanam societatem quam beneficiorum vicissitudo. — Sec. 55.

therefore the object of a just war; and, when such a war has once begun, it is lawful for not only the people as a whole but even for individuals to slay the enemy.

Tyrannicide, thus, is in last resort a just device for maintaining the reign of law among a people. But before this last stage is reached there must be some way in which the people can proceed in seeking to confine the king to legal paths. Who shall call him to judgment? Buchanan's answer[1] to this crucial question lacks altogether the degree of clearness attained in the *Vindiciæ.* It must be, he says, the whole people, who alone are above the law. But what if there be, as is always the case, a difference of opinion among the people? Then the majority must decide. But what if the majority, from timidity or negligence or venality, stand by the king? Then they must be considered bad citizens, and the decision must be made by the good citizens, who will always be on the side of liberty and decency.

This very impotent conclusion exhibits the bankruptcy of his whole theory, as a practical scheme for judging institutions. The final judgment on the ultimate issue in the state is to rest with the "good" citizens; but there is no criterion for determining who are "good" citizens except that they decide this issue in a certain way. Buchanan, indeed, concedes the bankruptcy of his theory by the remark: "But even if the whole people (*tota plebs*) should dissent [from proceeding against the king], this has nothing

[1] Secs. 76–80.

to do with our discussion; for we are inquiring not what will happen but what can justly happen."

4. *Johannes Althusius*

The systematic political doctrine which embodies most distinctly the influence of conditions in the Netherlands at the end of the sixteenth century is that of Althusius, the German jurist. This philosopher was for thirty-four years (1604–1638) chief magistrate of Emden, an imperial city on the frontier of the new Dutch Republic; and both in practical activity and in doctrinal conviction he manifested the fullest sympathy with the religious and political ideals of the people who were just freeing themselves from Spain. His work on political theory, *Systematic Politics, confirmed by Examples from Sacred and Profane History*,[1] was published in its complete form in 1610, when the familiarity with the situation in the Netherlands had produced its fullest effect on the writer's mind.[2]

The salient features of Althusius's system are: (1) exhaustive analysis and application of the contract theory in the explanation of social and political organization; (2) a clear and precise conception of sovereignty; (3) the ascription of sovereignty ex-

[1] *Politica methodice Digesta, Exemplis sacris et profanis illustrata.* I have used the third edition, 1614. For the account of Althusius's life I have followed implicitly the exhaustive monograph of Gierke: *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien* (Breslau, 1880).

[2] The work was dedicated to the Estates of Friesland, one of the United Provinces, and in the preface the revolt from Spain is glorified as a realization of the theory of the work.

clusively and immovably to the people; and (4) a conception of "people" which is incompatible with any idea of a "state" except that of a confederacy of lesser organized units.

Every species of associated life (*consociatio*) among human beings has its foundation, Althusius holds, in an agreement or contract to which the individuals are parties, and involves (1) a body of rules in accordance with which this society is to be conducted, and (2) a relationship of command and obedience among the members for the administration of these rules. Human society in its most general aspect consists of a vast series of associations, rising with increasing degrees of complexity from the family, through the corporation, the commune, the province, to a climax in the state. These various species of social organization, with all their infinity of subclasses, are most diverse in their purposes, but all alike have the characteristic stated above: in each the given end conditions the administration of its affairs, and the essence of the corporate life inheres in the contract by which the individual members unite for the achievement of that end.

The public associations with which politics is chiefly concerned are formed by successive consolidations. Families unite to form communities, *viz.* villages, parishes, towns, cities;[1] these unite to form provinces; and the latter in turn unite with the cities or each other to form the highest type, the state

[1] *Vici*, *pagi*, *oppida* and *civitates* are various forms of the lower political corporations.

(*politia, imperium, regnum, populus, respublica*). The state he defines as "a general public association in which a number of cities and provinces, combining their possessions and their activities, contract to establish, maintain and defend a sovereign power."[1] From this it follows — and Althusius emphasizes the point again and again — that the members of the state are not at all the individuals who reside within its limits, but the lesser corporations (cities and provinces) through whose contractual union it comes into existence.

Sovereignty (*maiestas*) is defined as the supreme and supereminent power of doing what pertains to the spiritual and bodily welfare of the members of the state. This power inheres, by the very nature of the association, in the people — the totality, that is of the members of the state. Not each member is sovereign, but the members as an aggregate. Like all the anti-monarchic writers, Althusius illustrates by the dictum of the Digest: "What is owed to a corporation is not owed to its individual members;"[2] and he ascribes sovereignty to the corporation, not to its members. But, for the purpose of carrying out the functions of the state, duties may be distributed among agents of the sovereign, and it is in this capacity alone that kings and magistrates exercise author-

[1] Universalis publica consociatio, qua civitates et provinciæ plures ad ius regni mutua communicatione rerum et operarum, mutuis viribus et sumptibus habendum, constituendum, exercendum et defendendum se obligant. — Chap. xi, sec. 1. By *ius regni* he means, as he later explains, *ius maiestatis*. *Cf.* xi, 13.

[2] "Quod universitati debetur singulis non debetur."

ity. These functionaries, whatever their power and jurisdiction in reference to the individuals, are by the very nature of the case themselves subject to the people as a whole. This appears not only from the nature of every association, in which the members unite for a certain end and retain necessarily control over the means to that end, but also from the nature of man himself; for all men being naturally free and equal, the exercise of authority by one over the rest must be based on the consent of the latter. Sovereign power, therefore, when properly understood, cannot conceivably be vested in any individual or group of individuals less than the whole people. It cannot be alienated or delegated to any one by the people; for it is the essential principle of social cohesion; so long as there is a people it must possess sovereignty. The duty of every officer of the state, then, is to submit to and enforce the laws in which the will of the sovereign people is embodied.[1]

The officials of a state fall into two classes: first, what Althusius calls the "ephors"; second, the "chief magistrate" (*summus magistratus*). Under the first head he includes all the various orders and estates in provinces and cities whose function it is to act as a restraint on the chief magistrate. These various bodies, or individuals endowed with similar powers, are representatives of the whole people, and are the organs for the expression of the sovereign will. In default of action by them on any point

[1] Bodin's doctrine of sovereignty (*infra*, p. 96) is specifically criticised and rejected. Cap. ix, secs. 20–22.

their authority devolves for exercise upon the assembly of the whole people. Under "chief magistrate" Althusius sets forth his conception of royal authority. The king is the executive of the people, to secure their interest and safety by carrying out the laws. His relation to the people is that of agent (*mandatarius*), and a contract between him and the people is perfected through his choice and coronation. He undertakes to govern in conformity to the fundamental law of the land, and they agree to obey him. But, like the author of the *Vindiciæ*, Althusius assigns to the people the advantageous rôle of *stipulator*, and maintains that the obligation of the king is absolute, while that of the people is only conditional.[1]

From this conception of the relation between king and people the familiar conclusions as to the tyrant follow. Deliberate violation of the law or dereliction in his duty transforms the chief magistrate into the tyrant, releases the people from the pledge of obedience, and calls into action the right of resistance and deposition[2] which is dormant so long as the pact is observed. The exercise of this right in its completeness pertains, however, only to the people in their sovereign totality, acting through the ephors; private individuals may merely interpose a passive resistance to unlawful commands, and defend themselves in case their natural rights are assailed. But while to the assembly of ephors, representing the sovereign people, pertain the right and the duty of resisting, of expel-

[1] Cap. xxxviii, sec. 30.
[2] "Ius resistentiæ et exauctorationis."

ling and of putting to death the tyrannical chief magistrate, to each member of the confederacy, acting through its particular ephors, belong the right and the duty, as an ultimate means of security against tyranny, of renouncing its connection with the rest and of associating itself with some other realm. A breach of the compact out of which the state arises thus justifies not only resistance but also secession; and Althusius regards this doctrine as a source of peculiar strength to the state, inasmuch as it provides an effective guarantee for the observance of the law of the land.[1]

The most cursory view of the system of Althusius reveals that it is a generalization from the constitution of the Holy Roman Empire, with adaptations to the recent conditions in the Netherlands. Apart from the framework of his system outlined above, there is much of sound and suggestive political science in his work. As illustrations may be cited his treatment of the functions and the forms of government. The ends of the social organization being twofold, namely, the spiritual and the secular welfare of the members, the functions of the government he explains to correspond. First, it must supervise religion, worship, morals and education; second, it must prescribe general rules of social conduct, to be enforced by penalties, and, in addition, must carry on a wide range of concrete activities for the positive promotion of the general welfare, including supervision of trade, commerce, coinage, weights and measures, the administration of the public revenues and property, and the

[1] Cap. xxxiii, secs. 53, 54, 76.

protection of the people from internal perils and external force. Althusius is a thorough Calvinist, and his scheme of governmental functions includes the maintenance of a state church, with a school system under its direction, and a far-reaching censorship of morals.[1]

As to the forms of state, he rejects entirely the ancient classifications and holds, logically enough, that since, by the very nature of the state, sovereignty must be in the people, there can be no more than one form of state.[2] Government, however, may be monarchic or polyarchic, according as the chief magistrate is an individual or an assembly. Yet, Althusius points out, it is scarcely conceivable that any purely monarchic or purely polyarchic government could exist; there will always be in a monarchy various councils and assemblies to share the responsibilities of the chief, just as there will always be in a polyarchy a concentration of functions in some individual for actual execution. Hence, he concludes, every government is normally a mixed form, and the names monarchy, aristocracy and democracy have real significance only as designating the most important element in each specific case.

5. *Mariana*

While the bulk of the anti-monarchic doctrine of the period we are considering was inspired by differences of creed between subjects and rulers, one very notable exposition of this doctrine was produced in a kingdom where the Catholic faith and royal absolutism

[1] Cap. xxx, "De Censura."

[2] Cap. xxxix, sec. 3.

had practically undisputed sway. I refer to the work of the Spanish Jesuit, Juan de Mariana, entitled, *On Kingship and the Education of a King*,[1] published in 1599 and dedicated to Philip III of Spain. The extreme views embodied in this work as to the limitations upon royal power probably represent the influence of the extensive researches to which the author had long devoted himself in connection with his great *History of Spain*;[2] like Hotman in France, he had been impressed with the relatively large part played by the Estates in the growth of monarchy.

In developing his conception of kingship, Mariana starts from the natural state of men, which he describes with some fulness on the general lines of Polybius's idea. In the beginning men lived like wild animals, following instinct in the procurement of food and the propagation of their kind, bound by no law and subject to no authority. The life had its advantages: nature furnished food and drink and shelter, through fruits and streams and caves; cheating, lying, avarice and ambition were unknown, and the cares of private property had not made their appearance. But, on the other hand, man's wants were greater and more varied than those of other animals, and at the same time he was less adapted than they[3] to the protection of himself and his young from the dangers that in-

[1] *De Rege et Regis Institutione.* I have used the edition of Mainz, 1605.

[2] *Historiæ de Rebus Hispaniæ*, first published in 1592.

[3] Mariana dwells especially on the helplessness of the human infant as compared with the young of other animals. *De Rege*, Lib. I, chap. i.

cessantly arose from both animate and inanimate forces around him. It was to overcome these disadvantages that men grouped themselves together and submitted to the leadership of some one who displayed especial capacity in promoting their welfare. This was the origin of civil society, with all its blessings to the race. The timidity and weakness of men were the divinely implanted qualities through which the rights of humanity were to be developed.[1]

The earliest and natural form of government, thus, was the rule of one, recognized as the wisest and unrestrained by anything like law. But the restraints of law were soon imposed because, in the first place, the wisdom and impartiality of the monarch began to be questioned, and, in the second place, the evil passions of men, growing stronger *pari passu* with the increase in knowledge, required some general system of restraint. Laws were at first probably very few and very simple; but with time they increased in number and complexity till now, Mariana mournfully observes, "we are as much burdened by laws as by vices."[2] The existence of law, however, by the side of the personal ruler he regards as of the essence of government, and on this assumption he

[1] Sic ex multarum rerum indigentia, ex metu et conscientia fragilitatis, iura humanitatis (per quam homines sumus) et civilis societas qua bene beateque vivitur, nata sunt. . . . Omnis hominis ratio ex eo maxime pendet, quod nudus fragilisque nascitur, quod alieno præsidio indiget atque alienis opibus adiuvari opus habet. — *Ib. id.*

[2] Illud etiam fit verisimile, leges initio paucissimas exstitisse easque paucis et apertis verbis nulla explicatione eguisse. Legum multitudinem tempus et malitia invexit tantum ut iam non minus legibus quam vitiis laboremus. — *Ibid.*, I, 2.

discusses the various forms of authority that have arisen among men since the first natural monarchy. Royalty is, on the whole, his preference. Democracy is plausible; but, he points out, following Pliny, wherever power is in a group of men, the less wise part will always prevail, "for the votes are not weighed but merely counted."[1] Monarchy restrained by law has less evils and greater efficiency than the other forms. It is likely, however, to degenerate into tyranny, which Mariana, like Aristotle, regards as consisting in monarchic rule exercised for the good of the ruler rather than of the subject. Against this species of government Mariana directs his celebrated and very radical theory of the right of tyrannicide, under which are included the less drastic forms of resistance.[2]

The broad grounds on which he bases the justification of resistance are, first, the sovereignty of the people, and second, the common sense of mankind, as exhibited in history. The royal power (*regia potestas*) has its source in a grant by the people (*respublica, populus*); but in making this grant of certain rights (*iura potestatis*) the people reserves to itself even greater rights, namely, those of taxation and legislation, and puts beyond the scope of royal authority the established laws concerning the succession to the throne, the revenue and the form of religion. The

[1] . . . in omni deliberatione pars sanior a peiori superabitur; neque enim suffragia ponderantur sed numerantur. — *Ib. id.* *Cf.* Pliny, *Epistolæ*, Lib. II, epist. 12.

[2] This is the content of Lib. I, cap. vi: "An tyrannum opprimere fas sit?"

people is, in other words, above the monarch. Furthermore, the familiar examples of the deposition and execution of tyrants by peoples in all parts of the world tell plainly of the belief that has universally prevailed, and this universal belief is properly to be taken as the voice of nature in our souls.[1] Hence the monarch who is clearly ruining the state is justly liable to removal by the people. Care must be taken in the process so that no greater disturbance than is necessary ensue. The assembly of the people must warn the offender to reform, and only upon his refusal may proceed to extremities. When, however, the people through its assembly has spoken, then, and not till then, may the private individual justly slay the tyrant. If, however, as is likely to be the case, the assembly is not permitted to meet or to act, the private citizen is justified in killing the tyrant at discretion.[2]

Mariana is fully aware of the dangers that are latent in this doctrine. He concedes that it practically leaves to individual judgment the decision as to who shall be considered a tyrant and thus strikes at the root of all political authority. But still he con-

[1] "Et est communis sensus quasi quædam naturæ vox mentibus nostris indita, auribus insonans lex, qua a turpi honestum secernimus."

[2] But giving him poison to drink is an unchristian method of assassination. It makes the victim in a sense a suicide, and suicide is contrary to divine and natural law. Mariana suggests, however, that poison would be unobjectionable if it could be administered without the participation of the victim in the procedure, as, for example, if his clothing could be saturated with some deadly substance which would be absorbed through the skin. For this curious discussion see cap. vii: "An liceat tyrannum veneno occidere."

siders the principle on the whole a useful one. Men are in general strongly disposed to submit to tyranny for the sake of quiet, and very few tyrants get their deserts; it is therefore a salutary restraint upon princes to inculcate the belief that the right to assassinate them if they become oppressive belongs to every one, and that the authority of the people is above their authority.[1]

But the normal organization of monarchy includes an organ of the popular will in the Estates of the Realm, — the bishops, nobles and representatives (*procuratores*) of the cities. This assembly is what Mariana calls the "state" (*respublica*) and the "people" (*populus*), and its superiority in power to the king is established in a full examination of the relative merits of absolute and limited monarchy.[2] The Estates are the formulator and guarantor of the fundamental law of the land, by which the monarch is circumscribed. In their control rest all matters of taxation, of succession to the throne, of the established religion of the state. The prince is in no sense *legibus solutus;* besides the restraint imposed by these fundamental laws, he is under a divine and natural obligation to submit to the will of God, and even to public opinion (*populari etiam civium opinione*). Mariana naturally dwells somewhat insistently on the supreme importance of the ecclesiastical element in the Estates and of ecclesiastical interests in the policy

[1] Quod caput est, sit principi persuasum totius reipublicæ maiorem quam ipsius unius auctoritatem esse. — *De Rege*, I, vi.

[2] Lib. I, cap. viii: "Reipublicæ an regis maior potestas sit?"

of the king; but his emphasis on these points is not stronger than that of the Protestant controversialists, while his general attitude toward absolutism is entirely in harmony with theirs. He mourns as sincerely over the decline of the power of the Estates in Spain as Hotman mourns over the like decline in France.

One book[1] of the *De Rege* is devoted to a discussion of practical questions of policy and administration — of the aims and methods that should prevail in the royal activity. There is much sound judgment displayed in this discussion, and also at times something of that peculiar quality which gave Machiavelli a doubtful reputation. The question as to whether, in the choice of officers of the state, moral character should be a determining consideration, is answered affirmatively as to ecclesiastics and judges and negatively as to military and minor administrative positions. Admirable chapters on taxation and money respectively set forth sound principles of economics, and exhibit the disastrous effects of debasement of the coinage. Poor relief is treated at length, and the functions of the ecclesiastical institutions in the case of paupers are rationally defended. Even the "tramp" question receives much attention[2] — a fact which contributes to the general impression that Spain was in a demoralized condition from the social and economic point of view. Mariana's discussion of military policy likewise suggests a consciousness of something

[1] Book III. The second book treats of the education of a prince.
[2] Lib. III, cap. xiv.

wrong in Spanish affairs, possibly a reflection of the failures in the Netherlands and against England. Apart, however, from the particular references to Spanish affairs, his general doctrine is, like that of Machiavelli,[1] that war is inevitable, that standing armies therefore are indispensable, and that the maintenance of domestic peace is conditioned on incessant warfare abroad. This, then, must be the royal policy. A just cause can generally be found, but whether it can be or not, keep the soldiers busy with incursions into foreign lands, with pillaging of heretic cities, with pure piracy and brigandage if necessary, and thus relieve the citizens of the burden of supporting them.[2] The Machiavellian spirit of which this doctrine is an example is manifest also, though in a less brutal form, in the chapter on the wisdom (*prudentia*) of the king. The supreme art of royalty is to maintain the good will of the subjects.[3] Hope and fear are the chief means. Not so much actual rewards and punishments, but the expectation of them, is effective. If a subject seeks what it is wrong to give, do not deny him so flatly as to extinguish hope. Let no one leave the royal presence in sadness. Unpleasant duties must be left to subordinates; acts of grace should be performed by the king in person.[4]

[1] *Cf. Political Theories, Ancient and Mediæval*, p. 321.

[2] Contendo pacem domesticam diu stare non posse nisi arma cum externis exerceantur. Neque enim aut causa iusta deesse potest aut militum [milites?] otio marcescere pati debemus; sed potius mari terraque prædas agere, in alienos fines irrumpere, urbes præsertim impiorum diripiendas militi tradere. — Lib. III, cap. v.

[3] "Debet rex, nisi id nomen exuat, volentibus imperare."

[4] Both Aristotle and Machiavelli had set forth this dictate of policy.

Let popular tumults be suppressed by the most violent officials, and then visit upon the latter the severest penalties for any dereliction on their part that can possibly be discovered; "thus all the wickedness will be punished and yet the people will remain well-disposed toward the prince." "Nothing," says Mariana, "is more effective with kings or subjects than self-interest, nor can there be any lasting compacts or friendships save where there is hope of some advantage."[1] Dissimulation, also, is indispensable to a monarch. Yet Mariana will not admit in principle the right of the king to lie or to deceive; only, he will get into serious difficulties unless he conceals his purposes and maintains a benignant aspect when conditions are most troublesome.[2]

These doctrines in the field of political ethics give a tone to Mariana's work that distinguishes it from those of the Protestant advocates of popular sovereignty whom we have considered. Calvinistic standards of morality were notoriously of a more rigid and austere type than those of the old creed, and Calvinistic theorists, whatever was true of their practice, in general clung pretty literally to the Decalogue in their code for kings. Mariana's teachings manifest a tendency toward that interpretation of duty which came to be known specifically as Jesuitical.

[1] Sit animo fixum, nulla re tum principes tum privatos moveri magis quam utilitate: neque ulla firma fœdera putet, nullas amicitias, unde nihil speratur commodi. — Lib. III, cap. xv.

[2] Mentiri et fallere numquam principi concedam; sed nisi consilia tegere didicerit, omnibus etiam noxiis benignitatem ostentare, multis sæpe difficultatibus implicabitur. — *Ibid.*

6. *General Influence of the Anti-Monarchic Theories*

The theories which have just been described injected into political philosophy and made the central topics of its discussion concepts which dominated the field until well into the nineteenth century. The state of nature, the contractual origin of society and government, and the indefeasible sovereignty of the people became henceforth dogmas that might or might not be accepted, but could never be ignored by any serious thinker on politics. That these concepts were absolutely novel at this time, is of course not true. The literature of antiquity abounds in allusions to the condition of man prior to the institution of human government, and indeed prior to any social life, and these allusions, brought prominently before the intellectual consciousness of the times through the revival of letters, contributed much to promote discussion of the state of nature. In like manner the idea of contract and consent as the basis of political authority owed its adoption not only to the close study of the ancient Jewish system which the Reformation had brought about, but also, as shown particularly in the *Vindiciæ contra Tyrannos* and Althusius, by the adaptation to political debate of the doctrines of the Roman private law. The system of Marsiglio and Cusanus, which had been adopted freely by Luther and the other great Reformers in ecclesiastical polity, was as freely applied by their successors in political questions. In the spirit, if not in the precise words, of Cusanus, it was laid down that since all

men are by nature equal, the authority of any one over another must rest wholly on agreement and consent; and, beyond where Cusanus had gone, the form and duration of this agreement and consent were deduced from the principles of commercial contract. Now for the first time explicitly and with elaboration the maxims of the Stoic jurists[1] of Rome became the chief foundation of speculations about the state and government.

The religious wars at the end of the sixteenth century brought fully into operation in secular politics the influences which were supreme in ecclesiastical politics at the beginning of the fifteenth century.[2] As Gerson and the conciliar party sought to destroy the autocracy of the Pope, and substitute the sovereignty of the General Council, so Languet and Buchanan and the rest sought to destroy the autocracy of the king and substitute the sovereignty of the Estates of the Realm. For in each of the theories described in this chapter the "people," to whom sovereignty is ascribed, is interpreted more or less precisely to mean the assembly of the magnates. As the conciliar party had consciously sought to establish a government by the great prelates, so the antimonarchic party sought to establish a government by the secular nobles. In a large sense the theory of popular sovereignty at this time was not revolutionary, but reactionary; it presented the familiar phenomenon of a philosophy based upon a system of

[1] *Cf. Political Theories Ancient and Mediæval*, pp. 128, 273 *et seq.*
[2] *Ibid.*, pp. 266 *et seq.*

institutions that was passing away. For the practical demand of the assailants of monarchy was that the feudal aristocracy should resume the sway which the monarchs were taking from its hands. The "sovereignty of the people," as set forth especially by Althusius, was wholly opposed to the consolidation that was going on and that could be perfected only by the national monarchs. Hence the theories that we have been considering failed of realization in the principal kingdoms,[1] and the absolute monarchy continued its work. Only when a new content was put into the old formula of "popular sovereignty" was the dogma properly adaptable to revolutionary propaganda.

In many details of their theory the anti-monarchic writers that we have noticed differed from one another, and the shades of doctrine on a variety of subjects were manifold. But one feature stands out clear and conspicuous in all the theories, namely, the idea that political authority is derived by its possessor not from a divine but from a human source. The construction put by Luther and Calvin on the teachings of the Scriptures in this respect is dropped, and submission to any particular ruler as the representative of God's will ceases to be the presumptive duty of a Christian. The law and the contract intervene between God and the monarch, and the royal acts are to be subjected to the test of mere

[1] Scotland remained a constitutional kingdom and the United Netherlands an aristocratic republic, but France, Spain and England were absolute monarchies.

human reason. On this ground Protestants unite with Catholics and deny to secular rulers that immediate divine right and hence that ever extending power which the Reformation had tended to insure to them.[1] Calvinists and Jesuits agree in at least the one contention, that despotism has no sanction from heaven.

But while this much of the anti-monarchic doctrine is clear, there is vagueness and inconsistency in the treatment of many points of theoretical importance. "The people," which is at the basis of so much of the disputation, is a somewhat elusive concept. In one place the term signifies the classes which constitute the Estates of the Realm, in another the Estates as organized in their assembly, in another something which the Estates represent; but in no case will it be conceded that the population as a whole, conceived as a multitude of individuals, is to be recognized as an embodiment of political power. Again, in the idea of the contract, the parties are in every case assumed to be the people and the king; but only Althusius gives any adequate idea as to the process by which a people comes to exist.[2] The contract dealt with by all the rest is, in short, what has come to be called the civil or governmental contract, as distinct from the social contract. It was hardly strange that in the stress of controversy something

[1] *Supra*, p. 36.

[2] Mariana starts from the isolated man, but the steps by which a number of these become a people, capable of expressing a corporate will, are not indicated.

less than exact theoretical analysis should have characterized the thinking of the earnest men who were in the heart of the fray. They sought and in a measure achieved certain concrete ends, but it was left for a series of thinkers who could bring more of philosophy and less of passion to the task, to formulate with precision the definitions and the dogmas which were of the highest significance in the political theory of the times. The latter half of the sixteenth century numbered among its great men a body of profound juristic intellects, and it is to one of these, whose legal learning was supplemented by extraordinary historical and philosophical insight, that we must now turn our attention.

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CHAPTER III

JEAN BODIN

1. *Method and First Principles of his Politics*

It is no less interesting than surprising that out of the very storm centre of controversy, passion and violence during the religious wars should have appeared a system of political theory as serenely philosophical in spirit, as precise in analysis, and as exact in logic as if it had been produced in the emotionless tents of Plato's philosopher-guardians. The work of the Frenchman, Jean Bodin, fairly marks an epoch in the history of scientific politics. It is the product of a mind of preëminently the scholarly type, conservative in quality yet glowing with the inspiration of the *Renaissance*, and disciplined by close contact with the practical statecraft of a powerful monarchy. For Bodin was no closet philosopher. He was trained in the law and spent most of his life in the public service, being closely attached to the court of Henry III. Both by interest and by natural disposition he was opposed to the disintegrating tendencies of the religious factions, and he supported the monarch as against Catholic and Huguenot, Guise and Bourbon.[1] For this attitude in practical politics

[1] For a short time, under exceptional circumstances, he joined the League. See Baudrillart, *J. Bodin et son temps*, pp. 131 *et seq.*

he was the better equipped in that he conspicuously lacked all religious prejudice. Indeed, though his works contain ample evidence of a formal veneration for God, it is not known to this day precisely what his creed was.[1] His affiliations in the tangled politics of the time were entirely with that group of distinguished thinkers, including L'Hôpital, Pasquier and De Thou, who were known as *Les Politiques*, and who saw no hope of a restoration of peace and order save through the suppression of all the parties and the assurance of unquestioned supremacy to the monarch.

In the exigencies of French politics, then, we must recognize one source of Bodin's political theory. His philosophy is a justification of absolute monarchy, and to that extent it is in the same class of controversial literature as the works of the monarchomachs already examined. But the most superficial consideration of his writings reveals a wide gap between him and most of his adversaries, in spirit and in method. In spirit, the difference is that between the philosopher, who finds his conclusion shaping itself automatically out of a wide range of observed facts, and the advocate, who laboriously marshals his array of facts to sustain the conclusion already assumed; in method, the difference is between the uncritical use of history and

[1] The inconveniences of the philosophical attitude in his day are illustrated by the fact that Bodin was assailed at different times as a Catholic, a Calvinist, a Jew, a Mohammedan and an atheist. His *Heptaplomeres* is a remarkable work, in the form of a colloquy between representatives of seven religious and philosophical creeds, with a strongly theistic tendency. *Cf.* Baudrillart, p. 190.

theological authority, and the critical use of history, guided by the broadest erudition and exceptional philosophic insight, with a pronounced scepticism as to all human authority.[1] Bodin is indeed the first writer to set forth a philosophy of history in the modern sense. He was the first, that is, to make an exhaustive and scientific review of the facts of human development the basis of broad generalizations as to the principles and purpose underlying that development. His comprehensive work, *A Method for the Easy Understanding of History*,[2] embodied radical innovations in respect to many cherished conceptions of social and political belief — innovations based upon a new attitude toward the interpretation of history. The work is a broad critical survey of the historiography of all ages, guided by a conception of the character and importance of history that is at many points quite in harmony with the best thought of modern times. Several of the most striking features of Bodin's later work on *The State* were first wrought into form out of the raw material of history in the *Method*. Here are to be found the basis of his theory as to the influence of climate and topography on political and social institutions,[3] his doctrine as to the forms and transmutations of states,[4] and his striking assertion of the theory of human progress, as

[1] Quærendum putavimus, non quid quisque dixerit aut senserit, quantæque auctoritatis fuerit, sed quid rationi convenienter posset et sententiæ suæ dicere. — *De Republica*, Præfatio.

[2] *Methodus ad facilem Historiarum Cognitionem*, published first in 1566. I have used the Paris edition of 1583.

[3] *Methodus*, cap. v.

[4] *Ibid.*, cap. vi.

opposed to the ancient dogma of deterioration from a golden age.[1]

Of scarcely less importance than his historical spirit, in its influence on his political theory, was Bodin's juristic temperament and training. For the career of a practitioner at the bar he seems to have had no fitness whatever;[2] but he brought to the study of the law that broad philosophical spirit which makes jurisprudence most fruitful in political science. In the dedicatory preface of his *Method* he severely criticises the current method of legal study. This consists, he says, in a dull and profitless reading and exegesis of the long obsolete laws of a single people, the Romans, in a compilation made under such circumstances as to embody not so much the actual system of the real Romans as the fancies of some insignificant Greeks (*Græculorum figmenta*). The serious and useful study of law must include, he holds, the systems of all people, especially those that have shown most progress and enlightenment. It must rest upon a careful and exhaustive study of social and political institutions in their development. In short, Bodin's conception of legal science is very close to that which is now designated as historical and comparative jurisprudence. Law and politics are, in his mind,

[1] *Methodus*, cap. vii: "Confutatio eorum qui Quatuor Monarchias Aureaque Secula statuunt." Bodin glows with pride in his own age as compared with antiquity. Firearms, for example, he declares have made the "catapulta et antiqua belli tormenta" ridiculous; and printing alone is easily worth all the inventions of the ancients. Nor is progress to cease: "Habet natura scientiarum thesauros innumerabiles, qui nullis ætatibus exhauriri possunt."

[2] Baudrillart, p. 115.

closely related sciences, both to be approached only through history.

It is entirely in harmony with the historical and juristic bent of his thought that Bodin accepts without question or discussion the idea of a law of nature that conditions all human relations. "Nature," with him, signifies an aggregate of forces lying between the divine and the human, and tends to take a materialistic form;[1] but in connection with "law" and "right" the ancient ethical sense persists, and the law of nature is merely the rules that distinguish right from wrong. This moral law is assumed throughout to determine from a higher plane all political theory. Bodin thus avoids the moral indifferentism of Machiavelli. Nor will he even identify natural law with the law common to all nations (*ius gentium*), — an identification that had from time to time been made since the days of imperial Rome: thus he denies that slavery can be considered natural merely because it has had universal prevalence, and, with all his absolutistic propensity, he rejects the doctrine that the sovereign may derogate from the law of nature, holding that what the defenders of the doctrine really have in mind is the sovereign's right to derogate from the law of nations (*ius gentium*).[2]

The great work in which Bodin set forth his political science was entitled *Six Books concerning the State*,

[1] See *Methodus*, cap. i, *init.* History he classifies as of three kinds, human, natural and divine.

[2] *De Republica*, Lib. III, cap. iv.

and was published first in French, in 1576, and later, with considerable revision, in Latin.[1] In form the treatise is admirably systematic, suggesting in this respect the scholastics. In method of presentation the historical element appears as subsidiary and corroborative, and the salient ideas are embodied first in clearly formulated definitions. The definition with which the work begins suggests the characteristic features of his whole philosophy: "A state is an aggregation of families and their common possessions, ruled by a sovereign power and by reason."[2] In this is implied, what the later chapters elaborate, that the basis of the state, both in historical and in logical development, is the family; that a distinction must be drawn between interests that are common and those that are not; that a supreme power is essential to the idea of the state; and that government is conditioned by a moral end. By rational rule he means rule in accordance with that natural law which embodies the dictates of justice. The sway of reason, rather than appetite, he regards as indispensable to distinguish between a state and a pirate band. The end to be sought in all human actions is happiness; but the happiness of a state, like that of an individual, is only to be conceived of in accordance with the requirements of moral, rational, and intellectual satisfactions.

[1] *De Republica Libri Sex*, 1586. I have used the Frankfort edition of 1641. There is an English translation by Richard Knolles, 1606.

[2] Respublica est familiarum rerumque inter ipsas communium, summa potestate ac ratione moderata multitudo. — Lib. I, cap. i.

2. *Origin and Social Basis of the State*

In his view of the origin of the state, Bodin exemplifies the transitional stage between the ancient Aristotelian idea and the social-contract idea that was soon to dominate all speculation. The essential fact in every association of men consists, he holds, in the subjection of the members to the commands of one another; hence every association involves an infringement of the liberty which nature has given to the individual.[1] This natural liberty he defines as freedom from the authority (*imperium*) of any one save God immortal. But though he from time to time suggests, as a rational starting-point for theory, a condition in which such liberty prevails among men, he nowhere fully develops this conception of a pre-social state. His preoccupation is with authority rather than with liberty; and, therefore, in constructing his view of the historical origin of political associations, he neglects entirely the individualistic conception of liberty, and starts from the family. His idea of the family is that of the Roman law and of the Hebrew patriarchs — a group of individuals under the supreme power of the *pater familias*. The "natural liberty" which he defines as pertaining to every individual is entirely incompatible with the subjection of wife, children and slaves to the head of the family. In short, the individualism which is

[1] Libertas illa quam nullis astrictam legibus unicuique natura dedit. — *De Republica*, Lib. I, cap. iii. Plena illa et a natura cuique tributa libertas vivendi ut vellet. — *Ibid.*, Lib. I, cap. vi.

expressed in his idea of liberty has no broad application, but, so far as it affects Bodin's philosophy at all, concerns only the *patres familias*. They, but only they, are free and equal under natural law.

This tentative and restricted adoption of the ideas of natural liberty and equality, as well as a like conservative handling of the question whether force or sociability was responsible for the beginnings of political life, is clearly to be seen in Bodin's account of the origin of the state.[1] Substantially, though he does not so phrase it, he bases the development of *society* on the social instinct of man, and the development of the *state* on force. Mankind started from a single family, out of which, through natural causes, sprang many families, who established homes for themselves at places well adapted for protection from the violence of nature. For common advantage a number of families would group themselves together about an eligible site — by a spring for water-supply, or on a hill for protection — and different groups would fight with one another for the more desirable spots. Primitive men were a violent, plundering crew — as is proved, he thinks, by the recorded fact that brigandage was a normal occupation among the early Greeks[2] — and life was rendered tolerable only by the divinely implanted social instinct. Through this the mutual affection which primarily united only members of the same family was in some degree extended to unite members of different families. Friendship

[1] *De Republica*, Lib. I, cap. vi, and Lib. III, cap. vii.
[2] *Cf. Political Theories, Ancient and Mediæval*, p. 60.

(*amicitia*) was the active principle through which "civil" associations (*societates ac sodalitia*) sprang up, crossing the boundaries of the family, which was the "natural" association. These civil associations, for purposes of trade, religious worship or other activity, were the bonds of human society before any political bonds were established, and they have continued through subsequent history to perform functions indispensable to social life, though distinct from those of government. Such is the theory by which Bodin explained the fraternities and clubs which figure vaguely but certainly in the history of the ancient city-states, and the guilds, corporations and communes which were so conspicuous in his own time.

While human society thus arose through the operation of the social instinct, the state, on the other hand, took its origin in force. In the wars which arose among the primitive families and groups of families the vanquished became the slaves of the victors, and at the same time the victors themselves were subjected to the authority of the chiefs whom they had chosen to lead them. Thus it was that natural liberty disappeared, and thus it was that slavery and political subjection came into existence together. Slave and subject, citizen and alien, prince and tyrant had a common origin.[1] The view of Aristotle and others, following Herodotus, that the first monarchs were voluntarily chosen by the peoples for their supereminent virtues, is, Bodin holds, wrong;

[1] Inde prima servitutis ac subditorum, inde civium et peregrinorum, principis ac tyranni origo. — *De Republica*, p. 72.

history shows that they were military leaders who imposed their sway upon the peoples by force. The erroneous doctrine is merely a part of that broader delusion which is embodied in the myth of a primeval golden age.

In harmony with this view of its origin, the state, in Bodin's theory, is the ultimate form of association, (*cœtus*), holding together by a supreme power a mass of lesser associations and individuals. The most elementary of these lesser forms is the family, held together by a natural bond — a natural association; then come in order the college (*collegium*), the corporation (*corpus*) and the commune (*universitas*), which he calls civil associations; and finally the state or commonwealth (*respublica*), which is the political association. All the ancient discussion as to the numerical limits of a state is peremptorily set aside as irrelevant. Where a sovereign power exists, there is a state, no matter whether the families subject to the power be as many as in imperial Rome or as few as in petty Ragusa.[1] The essence of the state is in the power that binds, not in the number bound. Thus Bodin logically removes from his path all the stumbling-blocks that the city-state tradition would leave to vex him.

The detailed analysis and discussion of the non-political forms of association constitute a most important part of Bodin's work; but only a few salient features can be noticed here. He views the family from the standpoint of the Roman law, and his con-

[1] *De Republica*, I, ii.

clusions are therefore less modern in spirit than other parts of his work. Thus the paternal authority (*patria potestas*)[1] assumes a very extreme form, though one corollary of this, practical freedom of divorce, is rather more suggestive of the nineteenth than of the sixteenth century. As to the institution of domestic slavery,[2] Bodin puts himself fully on modern ground. He denies that it is either natural or useful, overthrows *seriatim* the arguments in support of the institution as advanced by Aristotle and later writers,[3] and laments the recent reintroduction of the system into Europe after it had been for three centuries extinct there. This part of Bodin's treatise is unquestionably an innovation in social philosophy. He himself claims like distinction for his discussion of "civil associations" — the college, the corporation and the commune.[4] His starting-point here is the Roman law of partnerships and corporations, and his exposition is clearly shaped by the purpose of cutting away the supports which religious and political faction had found in the assumed rights and privileges of mediæval corporate bodies. While carefully defining and distinguishing

[1] *De Republica*, I, iii and iv.

[2] *Ibid.*, I, v.

[3] The claim that it is "natural" because universally prevalent is met by the observation that human sacrifices have been almost as widespread a custom; and the argument that slavery is expedient in order to make the idle, shiftless and vicious socially useful, is met by the startlingly modern suggestion that the same end could be better attained by the establishment of manual-training schools (*collegia publica puerorum ubi artes et opificia condiscant*). — P. 70.

[4] Lib. III, cap. 7.

the three types,[1] and ascribing to them a high degree of utility — indeed absolute necessity — in social life, he nevertheless iterates and reiterates the doctrine that they have in them no innate vital principle, but are purely creatures of the sovereign's will.[2] From this point of view not only the guilds, trading companies and other associations for private advantage, but also the colleges of magistrates, the provincial estates, the chartered communes and other public bodies, for which the Huguenots and the League had claimed indefeasible rights, were wholly subject to the power of the French monarch. All mankind, he thinks, may be regarded as a series of associations, from the family at the bottom to the state at the top; but the last is differentiated from all the rest by the decisive fact that it alone possesses sovereignty — the power which holds all the others in their places.

Bodin's treatment of associations completed the long process through which the Roman private law of corporations became a determining factor in public law and political theory.[3] He regards the state as substantially an aggregation of groups, though he

[1] A college is a lawful association (*consociatio*) of three or more persons of the same calling (*conditio*); a corporation is a union (*coniunctio*) of a number of colleges; a commune is the aggregation of all the families, colleges and corporations of the same town (*oppidum*), united by a community of rights (*iuris communione*). — P. 511.

[2] "Sunt cœtus in republica iure sociati, id est, summi principis beneficio et concessu, sine quibus corporum et collegiorum ius ac nomen amittunt."

[3] For early stages in this process see *Political Theories, Ancient and Mediæval*, p. 276.

continues, under Aristotelian influence, to treat of individuals also as elements in the commonwealth. It was from Bodin that Althusius, as we have already seen,[1] took his doctrine of groups and carried it to its extreme, submerging the individual entirely in the association, and ascribing to the latter, in all its forms, so complete an endowment of natural rights as to leave no room for any political entity more coherent than a confederation.

3. *Citizenship*

The place reserved for the treatment of the individual in relation to the state is revealed in his discussion of the nature of citizenship.[2] Not that the citizen is the primary element in the political body. This primary element is the family. The family may exist without the state, but the converse is not true. The citizen, then, is but the head of the family — the *pater familias* — in a different relationship.

> When the *pater familias* goes forth from the home in which he has domestic authority (*imperium*) and joins with other heads of families in carrying on affairs, then assuredly he puts aside the name of *pater familias* and master (*dominus*) and appears as an associate (*socius*) and a citizen.

But while a relation to his fellow *patres familias* and to public affairs gives character to the citizen, no accession of political rights is essential to the conception. The confused and contradictory criteria of citizenship in Aristotle's *Politics* are rejected, espe-

[1] *Supra*, p. 63.
[2] This is the subject of Bk. I, chap. vi.

cially the assertion that participation in political functions is a prime characteristic of the citizen. A citizen, says Bodin, is "a free man who is subject to the sovereign power of another."[1] "Free" excludes slaves, but not women or those under paternal authority. Excepting the servile class, then, the population of a state falls into two primary divisions, sovereign and citizens. Among the individuals of the latter class there may be, with respect to one another, an infinite variety of rights, privileges and immunities; but with respect to the sovereign, all stand in precisely the same relation, namely, subjection.

Equality among citizens, whether in dignity, rights[2] or condition, is regarded by Bodin as an absurd idea, and he scoffs at those who strive for such an end, "so that there shall be in the state no first, no last and no middle, but all shall be mixed up regardless of age, sex or status."[3] Nobility is an important social and political institution; women have no fitness for affairs outside of the household; and it is rational to take account of a man's occupation in determining his position in society and the state.[4]

[1] Liber homo qui summæ alterius potestatis obligatur. — I, vi.

[2] He proves from history "nusquam gentium ullam esse aut antea fuisse rempublicam, quantumvis popularem, seu veram seu hominum opinione fictam, in qua cives omnes omnino iure civitatis exæquarentur." — I, vi, end.

[3] *De Republica*, Lib. III, cap. viii.

[4] Wholesale merchants are qualified for citizenship, but retailers and artisans, Bodin is inclined to think, are not. His pronounced views as to the unfitness of women for public life are said to have led Queen Elizabeth, when he was with an embassy at the English court, to dub him punningly, "M. Badin."

It is not necessary to follow Bodin's exhaustive examination of the law of antiquity and of later centuries to catch the drift of his purpose in this doctrine. He is very ready to concede that the peer may have different rights and privileges from the townsman (*bourgeois*), the townsman from the rustic and from other townsmen; but he feels that the aggregation of social classes which feudalism has developed can attain the unity and order of true state life only through a power dominating and regulating all alike. Subjection to such a sovereign power is the sole test of citizenship, and the recognition of a common sovereign is the sole criterion of a state.

On this basis the semi-feudal, semi-national monarchy of his time can logically rest as a true state. The great variety of customs, institutions, even languages, that characterizes such a monarchy is no bar to the recognition of statehood. Yet Bodin is entirely conscious of the importance of social homogeneity in determining political relations, even if he cannot concede that such homogeneity is good ground for independent political life. Hence he distinguishes two species of state — the commonwealth (*respublica*) and the city (*civitas*), by attributes similar to those which in later thought have come to differentiate "empire" from "nation." The commonwealth (*respublica*) consists of citizens subject to the same sovereign power

even though they differ from one another in manners, laws, institutions and race (*infinita gentium varietate*). But if all the citizens have the same laws, there is not only a single commonwealth, but also a single city (*civitas*), even though the

citizens live scattered about in many villages, towns and urban communities.[1]

Throughout the chapter it is possible to discern in Bodin's thought the influence of Greek, Roman and mediæval conceptions. The Hellenic πόλις and the Roman *urbs* and *municipium* included villages (*vici*); the feudal state, after the rise of the towns, included many *urbes;* and Bodin's *respublica* includes all these earlier forms.

4. *The Theory of Sovereignty*

In the eighth chapter of Book I of the *Republic* Bodin takes up the formal discussion of sovereignty.[2] The idea is embodied, as we have already seen, in his definition of state. He defines the conception thus: "Sovereignty is supreme power over citizens and subjects, unrestrained by the laws."[3] Considering that such a definition is absolutely essential to the idea of the state, Bodin assumes an air of pardonable pride in declaring that neither philosopher nor jurist has ever before propounded one.

In the development of his definition, it is laid down that authority which is truly sovereign must

[1] Lib. I, cap. vi (p. 75). And again (p. 76): ". . . civitas plurium vicorum ac urbium cives iisdem legibus ac moribus complexa moderatur. Rempublicam vero ex pluribus civitatibus ac provinciis, quæ variis legibus ac moribus utuntur, constitui videmus, quæ tamen summa quadam imperii potestate coercentur."

[2] For some phases of the earlier history of this conception, see *Political Theories, Ancient and Mediæval*, pp. 65 *et seq.*, 239, 248 *et seq.*, 267, 273; also Gierke, *Johannes Althusius*, pp. 123 *et seq.*

[3] "Maiestas est summa in cives ac subditos legibusque soluta potestas."

be not only supreme, but perpetual — that is, without limit of time. Thus the Roman dictator, with all his power, fell short of sovereignty through the limitation of his term. Similarly any official intrusted with supreme authority for the accomplishment of some specific purpose is less than sovereign. Regents, viceroys and other such dignitaries fall into a like category. Yet Bodin takes care not to carry the idea of "perpetual" too far. He is not ready to exclude the conception of monarch from the scientific treatment of politics. "But if," he says, "we construe perpetual power as that which will never have an end, sovereignty will have no existence save in the popular and the aristocratic state; since the people [only] is immortal, unless, indeed, it be utterly exterminated." The life tenure of supreme power, therefore, may constitute sovereignty in an individual. Sovereignty in this sense may be bestowed by a people on an individual, or be transferred from one individual to another, and in either case the recipient is truly sovereign provided the transfer is free from condition.

The nature of the supremacy that is implied in *maiestas* is set forth by Bodin with an abundance of analysis and illustration. The essence of the idea is embodied in the words "*legibus soluta*." Sovereignty has its chief and characteristic function in the making of laws.[1] From the binding force of these laws, the sovereign is by the nature of the case free.

[1] "Summum ius maiestatis in eo potissimum versari, cum non modo singulis sed etiam universis leges dantur iisque imperatur."

But not from all laws. "If we should define sovereignty as a power *legibus omnibus soluta*, no prince could be found to have sovereign rights; for all are bound by divine law and the law of nature and also by that common law of nations which embodies principles distinct from these."[1] This standpoint is consistently maintained by Bodin. His legislator is the legislator of the jurist, not of the theologian or of the moral philosopher. He assumes, but nowhere closely defines, the *leges divinæ, naturæ et gentium*. Those are conceptions beyond his precise field, always controlling, indeed, but from a higher plane, the phenomena with which he wishes specifically to deal. The sovereign, like the subject, is bound by the law of God and of nature, but his obligation in this respect is to God, by whom it will be enforced.

As to the civil law — the law of the land — the sovereign's will is the ultimate source of its every precept, and the will is free.[2] No statute, whether enacted by himself or by his predecessor, survives a duly signified change of will on the part of the holder of sovereign power. Bodin is quite explicit in laying down this fundamental principle, but his subsequent discussion introduces some important modifications. The laws of God and of nature come in to determine the answer to several questions. If a prince (sovereign) has sworn to observe the laws of his fathers,

[1] *De Republica*, p. 132.

[2] Bodin frequently employs the word *princeps* for "sovereign"; and this usage contributes greatly to aggravate a confusion of sovereign with monarch which has its primary source in the writer's preference for monarchy.

is he bound thereto? Not, says Bodin, if he has sworn merely with himself; but the obligation is good if another prince (sovereign) has a recognized interest in it, or if it is undertaken toward the subjects as a condition of reigning. Here, however, the force of the obligation arises, not from the oath, but from the *bona fide* contract, which, in the case of a sovereign, must be sharply distinguished from a law. The prince, like the private citizen, is subject to the principles of natural law, among which the keeping of contracts occupies a high place. Yet when the reason for a pledge has ceased, the obligation on the part of the prince *ipso facto* ceases. Though Bodin does not point it out, the sovereign, under this theory, has a most important advantage over his subjects in the fact that his decision as to when the reason for a given pledge has ceased is very likely to be final. That the philosopher is conscious of a difficulty in the practical working of his principle appears, however, in his declaration that "well-informed princes do not allow themselves to come under the obligation of an oath where matters of legislation are concerned, lest they should not enjoy the supreme power in the state."

In addition to the keeping of promises, the other principles of the law of nature operate also to hedge about the sovereign. Especially earnest and explicit is Bodin in the matter of private property. The omnipotence of a prince is only *imperium*, not *dominatus*. The author cites approvingly the maxim of Seneca, "Ad reges potestas omnium pertinet, ad

singulos proprietas." "Without just cause," he says "the sovereign cannot seize or grant away the property of another."[1] And he cites with a true lawyer's delight instances in which the French kings have submitted to the judgments of their own courts in questions touching private property.

It is obviously with a view to guarding against the possibility that his theory may be warped to the support of oppressive government that Bodin dwells with such iteration on the restraints that the sovereign must find in divine and natural law. An elaborate distinction between the king and the tyrant is worked out on this basis.[2] The king is he who renders to the laws of God and nature the same obedience which his subjects render to him. The tyrant spurns these laws and abuses at his caprice the liberties and property of his subjects. But the tyrant is no less sovereign than the king. Sovereignty is a political fact, consisting only in the possession and exercise of supreme power; the distinction between true royalty and tyranny rests on a moral principle, and is determined by the mode of exercising this power.

In addition, however, to the restraints of divine and natural law, there are evidences in Bodin's thought of other limitations upon the sovereign which cannot so easily be put in the category of moral as distinct from legal limitations. He finds laws in the state which the sovereign cannot touch.

[1] Hoc fixum est: Principi alienis opibus ac bonis manus afferre aut ea largiri cuique sine iusta causa non licere. — P. 162.

[2] Lib. II, cap. i–iv *passim*.

His allusions to these superior rules are far from clear, but they seem to indicate a vague notion in the writer's mind of what we call a constitution, that is, of political principles or institutions so fundamental as to determine the very existence of a state. Thus, in discussing the extent of the sovereign prince's authority in respect to the law, he says:

> But so far as concerns the *leges imperii*, since they are connected with sovereignty itself, princes can neither abrogate nor modify them. Of this class is the Salic Law, the firmest foundation of this kingdom.[1]

In not explaining fully the conception involved in the term *leges imperii*, Bodin is guilty of a serious lapse. His anxiety to have something in a state more fixed and permanent than the human will leads him to limit the power *legibus soluta*, by *leges* that are neither natural nor divine. But who is the law-maker in the case of these *leges imperii?* Bodin might have answered, consistently with his general theory of the historical origin of the state, "nature." But this conception of nature would have been quite distinct from that which lay at the bottom of his *leges naturæ*, and would have led to multiplied confusion. Or he might have found the source of these laws in that "people" in whose collective life he saw the only possibility of a perpetual sovereignty.[2] But from lines of reasoning that led in the direction of popular authority, Bodin's aversion was very pro-

[1] P. 139. I can find no precise English equivalent of *leges imperii*. "Laws concerning the imperium" would perhaps convey Bodin's idea.

[2] *Supra*, p. 97.

nounced; a *populus* in his view was too nearly identical with a disorderly mob. So his opportunity to elaborate the distinction between the constitution-making sovereign of a state and the lawmaking sovereign within the constitution was lost. With his exact definition of the latter, however, he advanced the theory of sovereignty to a point beyond which a great many writers have not passed even at the present day.

The failure of Bodin to dilate upon the distinction just noticed is the more surprising in view of the very elaborate discussion of the meaning of *lex* in his treatment of the characteristic rights (*iura*) of sovereignty.[1] The first of these rights is that of imposing laws on the citizens either collectively or individually (*legem universis ac singulis civibus dare*). *Lex* is sharply distinguished from *edictum* or *decretum.* The sovereign makes law; the magistrates issue decrees. So the relation of custom (*consuetudo*) to law is effectively set forth. It is not true, he holds, that custom and law are of like character and force, and that the people, as the source of the one, is on a level with the prince, the source of the other. Law can abolish custom; not so the converse:[2] custom has no sanction, while sanction is characteristic of law; the force of custom is precarious till the sovereign establishes a sanction, whereupon the cus-

[1] Lib. I, cap. x.

[2] This apparently doubtful proposition he fortifies by declaring it the duty of the magistrates to recall into operation laws whose force has been weakened by custom.

tom at once becomes law. Hence, he concludes, both law and custom depend on the will of those who hold the sovereign power in the state. Again, a clear distinction between *lex* and *ius* is noted. *Ius* relates to what is just and good, without regard to any command; *lex* relates to the sovereignty of one issuing a command.[1] In short, law, he says, is nothing else than a command of the sovereign. After this, the conception of *leges imperii*, above the sovereign will, seems very much out of place in Bodin's system.

Legislation, then, is not only the chief function of the sovereign; it is practically the sole and all inclusive function. For the sake of clearness, however, Bodin specifies and discusses various specific subjects which may be regarded as peculiar to the scope of sovereign action. Chief among these are the determination of questions of peace and war; the appointment of magistrates; jurisdiction on final appeal; the pardoning power; the exaction of oaths of fidelity and obedience from all subjects; the coining of money; and the imposition of taxes.

5. *Forms of State and of Government*

Bodin's epoch-making theory of sovereignty is the basis of an equally notable doctrine as to the forms of state and of government. His thought here is singularly clean-cut and exact. In the first place he

[1] Plurimum distat lex a iure: ius enim sine iussu, ad id quod æquum bonum est; lex autem ad imperantis maiestatem pertinet.—Lib. I, cap. viii.

distinguishes with great precision between state and government — justly taking pride in the originality of the distinction, to the lack of which he attributes important defects in the theories of Aristotle and others.[1] The possession of supreme power determines the form of state, but the system and method through which this power is exercised determine the form of government.

As to the forms of state, there are, Bodin holds, three and three only — monarchy, aristocracy and democracy. The basis of the classification is purely numerical. When the sovereign power is in an individual, the state is monarchic; when the sovereignty is in less than a majority of the citizens, the state is aristocratic; and when sovereignty rests in the whole body of citizens, that is, in the majority, the state is democratic. In this classification, with his rigid definition of sovereignty at its base, there is no room at all for the idea of a mixed form, which had had so great a vogue since Polybius. Against this idea Bodin directs a most vigorous polemic,[2] insisting that a society in which supreme power is claimed in part by various elements is not a state at all, but anarchy. What has been treated by previous philosophers as a division of sovereignty in many states has been in reality a distribution of the functions incidental to the

[1] Illud admonendi sumus, reipublicæ statum ab imperandi ratione distare plurimum, quod ante nemo, quantum intelligere potuimus, animadvertit. — Lib. II, cap. ii, *ad init. et passim.* And again: Aristoteles gubernandi civitatis rationem pro statu reipublicæ usurpavit. — Lib. II, cap. vii (p. 367).

[2] Lib. II, cap. i.

execution of the sovereign will. It is in administration, not in sovereignty, that there may be such joint participation of different elements as to justify the designation "mixed." A monarchic state has an aristocratic government when the sovereign monarch confers honours and offices upon certain classes only; it has a democratic government when honour and office are bestowed on all classes alike. The early Roman republic was a democratic state with an aristocratic government. The Athens of Pericles was democratic in both state and government.

In applying his theory to contemporary systems, Bodin, with admirable logic, denies to the Holy Roman Empire the character of a monarchy, and, in view of the extensive powers of the Diet, classes it with the aristocracies. He is doubtful, however, whether it is really to be regarded as a simple state and not rather as a confederation.[1] England, France and Spain are classed as monarchies in the strict sense, though only after an exhaustive and not altogether convincing discussion of the relations between the kings and the respective parliaments. England gives him the most trouble, on account of the rights claimed by the lawyers for Parliament; but in an investigation of incidents in the Tudor reigns he finds ground for the conclusion that ultimate authority is really in the king and that the state therefore is monarchic. As to France, Bodin manifests great impatience with those (meaning Hotman and the other anti-monarchic writers) who falsely pretend that the estates and

[1] *De Republica*, II, vi.

parlements have had any share in the sovereignty, and he so interprets French history and law as to show that those bodies have been merely advisory, while the king has been absolute.

While the criterion as to the form of state is simple and exact, and permits no qualification, each form, nevertheless, may include several species, differing from one another in respects that do not affect the fact of pure power. Of monarchy, thus, there are three species. The first is the *dominatus*, or despotism, in which the monarch, like the ancient patriarchs, rules his subjects as the *pater familias* rules his slaves. Of this primitive type the Muscovites and Turks are, Bodin thinks, the chief existing survivals. The second species is the royal monarchy (*monarchia regalis*), in which the subjects are secure in their rights of person and property, while the monarch, respecting the laws of God and of nature, in all matters outside of these receives willing obedience to the laws he himself establishes.[1] The third species is the tyranny (*tyrannis*), in which the prince, spurning the laws of nature and of nations, abuses his subjects according to his caprice. Of these three species, Bodin regards the royal monarchy not only as the ideal type of monarchic state, but also as the best form of state in general. The tyrant he describes on the conventional lines, but he does not permit a profound sense of the moral turpitude of tyranny to

[1] Subditi libertate ac dominio rerum fruentes, sui principis legibus obsequuntur; perinde ac princeps ipse divinis ac naturæ imperiis obtemperandum iudicat. — Lib. II, cap. iii.

affect the conception of the rights of sovereignty. If a tyrant is a legitimate sovereign, the duty of the subject is obedience, no matter how scandalous the crimes and vices of the ruler.[1] Yet he concedes that it would be justifiable for another sovereign prince to interfere and despatch such an offender.

The systematic comparison of the various forms of state which Bodin makes in the *Republic*[2] is in his most judicious and philosophical vein. The popular state seems, he admits, to be in many respects more in conformity to nature (*magis consentanea naturæ*) than aristocracy or monarchy; yet the fickleness, venality and administrative inefficiency of democracy are commonplaces of both theory and observation, and for the strength of the Swiss — the only conspicuously successful modern popular state — he finds exceptional causes[3] which vitiate any conclusions based upon their peculiar political system. Again, aristocracy, as the mean between the two extreme forms, and as securing adequate recognition to virtue and property, seems to have much in its favour; but here again he finds in both theory and history (Genoa furnishing the decisive example) reasons for regarding this form as in the last analysis unsatisfactory. In monarchy, finally, he sees grave difficulties

[1] Nec singulis civibus nec universis fas est summi principis vitam, famam aut fortunas in discrimen vocare, . . . etiamsi omni scelerum ac flagitiorum . . . turpitudine infamis esset. — Lib. II, cap. v.

[2] Lib. VI, cap. iv *et seq.*

[3] *E.g.*, the Swiss early drove out the nobility and thus got rid of one source of faction; and the most turbulent elements of the population are drawn off by the practice of going abroad as mercenaries.

and dangers, especially in connection with succession to the throne, and with the demoralizing effects of great power on individual character. Yet, with the matter of succession firmly fixed on the principle of heredity, primogeniture and the exclusion of the female lines, he thinks monarchy the best form. In ordinary administration a monarch can from his exalted position draw upon all classes and capacities in the population for service, while the rivalry of factions in democracy and aristocracy limits participation in the public service to the members of that one which happens to be triumphant. In emergencies, the requisite concentration of power is in monarchy the normal condition, while in the other forms it is secured only through extraordinary devices, such as the dictatorship. Monarchy, finally, is the only form that is adapted to the development of extensive dominion — of the great states in which the highest welfare and happiness of the people are chiefly to be found.[1]

6. *Theory of Revolutions*

Bodin's treatment of the transformations of states[2] is very obviously modelled on the famous book devoted to this subject in the *Politics* of Aristotle. But it is by no means to be said that the French philosopher is a servile imitator of the Greek. On the contrary, Bodin's discussion is as distinctly an original and important contribution to the subject as was Aristotle's

[1] He says that if the Swiss should attempt a career of expansion and conquest, their liberty and prosperity as a democracy would soon disappear.

[2] *De Republica*, Lib. IV.

nineteen centuries earlier. There is at the outset a decisive difference between the standpoints from which the subject is viewed by the two philosophers. Aristotle, as we have seen,[1] practically assumes that perfect stability is the ideal end of political organization and activity, and judges institutions accordingly. Bodin, on the other hand, is influenced throughout his philosophy by the conception of development and progress through decay and death. Transformation of states is inevitable, he believes, and the effort of man should be directed, not to the prevention of change, but to the determination of the manner in which it shall take place. Revolution and the death of a state may be sudden and violent, or it may be slow, peaceful and in a sense voluntary. The latter is the happier and more "natural" manner in commonwealths, as in the death of individuals.[2]

Employing his doctrine of sovereignty, Bodin distinguishes two kinds of transformation — *alteratio*, which affects any law or institution not involving the supreme power, and *conversio*, or revolution in the strict sense, through which a change in the location of the sovereignty takes place. Since there are but three forms of state, there are six species of *conversio*, as each form may be supplanted by either of the other two. The line between mere alteration and

[1] *Political Theories, Ancient and Mediæval*, pp. 84, 85.

[2] Reipublicæ conversionem vel occasum iudicamus naturæ congruentem quem post infinita pæne secula paulatim fieri necesse est. — *De Republica*, I, iv.

Beatior est eorum conditio qui conversiones . . . et obitum minus sentiunt. — *Ibid.*

true revolution is maintained with the utmost rigidity by Bodin; a total change in laws, in religion, even in location does not constitute revolution. But when supreme power passes from monarch to aristocracy or people, or *vice versa*, then, though laws, religion and all other institutions remain as before, there is nevertheless true revolution. The six kinds of *conversio* are discussed at length by Bodin, with copious historical illustrations, and the conclusion is reached that, of the three forms of state, monarchy, especially when hereditary, is the most stable, and democracy the least so.

Though the causes that render revolution inevitable lie beyond human control, their workings can nevertheless be detected and the tendencies in some measure modified or counteracted by human intelligence. Bodin's list of these causes and his suggestions for dealing with them exhibit a curious combination of pseudo-science and real philosophical insight. Classifying the causes as divine, human and natural, he abandons at once all hope of ascertaining the secret will of God or of devising rules by which the infinite mutations of the free human will may be foretold or regulated. But there is, he holds, a body of "natural" facts from which, by sound interpretation, the catastrophic points in the careers of commonwealths, as of individuals, may be detected. These important "facts" prove to be the movements of the heavenly bodies, and the chapter in which he deals with them[1] is a queer medley of astronomy, astrology

[1] Lib. IV, cap. ii.

and mystic Pythagorean and Platonic mathematics.[1] But after revealing in this chapter a certain leaning toward the occult sciences which found expression in other of his writings,[2] Bodin resumes the rôle of a clear-headed student of politics and discusses with great suggestiveness some of the social and governmental conditions that have an immediate bearing on the transformation of states. Here occurs his examination of the questions whether the tenure of magistrates should be permanent or limited, whether perfect harmony or some judicious degree of discord and rivalry among the magistrates is the better guarantee against disturbance to the sovereign, and what in general should be the relation of the sovereign to civil and religious parties. Much more significant than the details of his answers is the fact that he in most cases avoids any sweeping *a priori* solution of the problem and emphasizes the general principle that the character and institutions of each particular form of state must be made the basis of the conclusion. Incidentally to the discussion, though not always relevantly, he disapproves of the personal participation of monarchs in the administration of justice,

[1] Bodin takes great pains, before setting forth his own bizarre calculations, to show the shortcomings of other astrologers. Thus he gravely refutes the ancient horoscope of Rome, based on the demonstration that the city was founded "in the third year of the sixth olympiad, on the twenty-first of April, at a little before three o'clock P.M., with Saturn, Mars and Venus in Scorpio, Jupiter in Pisces, *etc.*" The positions assigned to the planets are obviously, Bodin holds, characteristic of a mercantile and philosophical nation and could not belong to so warlike a people as the Romans.

[2] *Cf.* also his works on witchcraft and sorcery, esp. the *Démonomanie,* described in Baudrillart, *op. cit.*, pp. 183 *et seq.*

repudiates the social expediency of duelling, and declares that since belief is not subject to compulsion,[1] force is but an indifferent instrument for the maintenance of uniformity in religion among the citizens. Yet he will not concede the expediency of unlimited freedom of expression; when a religion is once definitively established for a people, then further discussion of it should be prohibited under heavy penalties, since, he observes, there is nothing so true and good that skilful talkers cannot make it appear doubtful. The recent extravagances of the Anabaptists in Germany serve as an illustration of the danger of permitting eloquent agitators to have free rein. The right of the citizen to bear arms, also, is one of the privileges which Bodin regards as promotive of sedition and as therefore to be closely restricted by the sovereign.

But none of these various specific measures is to him so important, in a philosophical view of the causes and preventives of revolution, as the careful study of the underlying and permanent characteristics peculiar to each state and people, and the adaptation of institutions to these peculiarities. Most significant in this respect, he holds, is the influence of the physical environment. The political and social bearings of climate and topography, he thinks, have never been scientifically analyzed, and accordingly he makes them the subject of a long and careful investigation in both the *Method* and the *Republic*.[2] This

[1] Cum ea sit in hominibus insita vis ac natura ut ad aliquid assentiendum sponte duci velit, cogi nolit.—Lib. IV, cap. vii.

[2] *Methodus*, cap. v; *De Republica*, Lib. V, cap. i.

study, though in places decidedly weak in the light of modern physiology and history, is nevertheless conceived and executed in the true scientific spirit, and it fairly justifies his claim to originality.[1] According to latitude national characteristics vary thus: northern peoples excel in bodily, physical strength, southern peoples in craft and genius. The peoples between the extremes excel each extreme in the specialty of the other; hence, as embodying the mean, the middle peoples are best adapted to control politics and maintain justice. Fighting power is shown by history to have come chiefly from the north (witness the Scythian, Varangian and Swiss body guards of southern monarchs), philosophy and abstract speculation in general from the south, and political and legal science from the intermediate regions.[2] Distinctions by longitude are worked out in the same way, but with hardly so positive conclusions: in general he finds that western nations have more of the characteristics of the northerners, and eastern peoples more resemblance to those of the south. Topographical differences also express themselves in national peculiarities, the most important fact here being

1 Both Plato and Aristotle had touched on the distinctions between peoples according to situation, but neither had elaborated the idea. *Cf. The Laws*, V, end, and *The Politics*, IV, vi.

2 The middle has been the seat of the great empires (*e.g.* Rome), which have been able to extend their sway by conquest more to the south than to the north. He finds corroboration of his view in the demonstration that the English conquered the French in war, but not the Scotch, and that on the other hand the French generally got the better of the English in diplomacy, but were worsted in that field by the Spanish.

elevation. Between mountains and plains he finds as clear distinctions as between northern and southern latitudes.

But while Bodin ascribes to the physical environment an important influence on national character and institutions, he guards carefully in this case, as in his discussion of the influence of the stars, against any strongly fatalistic implication. In the conduct of government and in legislation heed must be paid to the feelings and prejudices which depend upon material surroundings; but this does not mean that there is any absolute limit fixed by the latter. On the contrary, the form of government or legislation judiciously directed can have a determining influence on popular character. A resolute tyranny can make a strong people weak and spiritless; or a popular régime may develop political ability in a nation that has formerly been slavish and oppressed. Material influences, therefore, must be carefully considered in any view of political institutions, but their effect should be, not to paralyze, but to stimulate, the intelligence of the statesman.

7. *Principles of Government and Administration*

While the greatest distinction of Bodin as a political philosopher lies in those broad doctrines of sovereignty and of the transformations of states that have already been described, his work abounds also in discussions of the problems of practical policy — of those subjects which lie in the field rather of government than of the state, as he distinguishes the concepts.

His conclusions are strictly conformed, however, to the requirements of the fundamental dogmas of his system, and the subjects which he discusses are in most cases those which are of vital contemporaneous concern to the French monarchy.

The essential elements of government, as distinct from the sovereign, are a senate, or advisory council, and a body of magistrates. The senate he conceives to be an indispensable organ in every state, whether monarchic, aristocratic or popular;[1] but its function involves no participation in sovereignty, and the pretensions to such participation that are made on behalf of the parliaments and estates-general in the monarchies of his own day, Bodin is at the greatest pains to refute. Magistrates he classifies in a twofold manner: first, those endowed with *imperium*, or the authority to issue commands, as contrasted with those whose functions are purely ministerial; and second, those whose duties are general and permanent as contrasted with those who are appointed merely for the execution of a specific task.[2] The fundamental question in connection with magistrates is their relation to the sovereign and his law.[3] Bodin's conclusion here is that when the sovereign's command contravenes the law of God or of nature, the magistrate is not bound to obey; when it contravenes the law of nations (*ius gentium*) or the law of the land, obedience is

[1] *De Republica*, Lib. III, cap. i.

[2] *Ibid.*, cap. ii and iii. Bodin points out that historically the permanent magistracy, with full powers, developed out of the system of temporary officials appointed by the sovereign for particular tasks.

[3] Lib. III, cap. iv.

obligatory. The possibility of trouble in the working of this doctrine, due to the uncertainty of the "law of nature," is fully appreciated by Bodin, who admits the great diversity of opinion as to the content of that law. He conceives, however, that moral iniquity will always raise in the virtuous magistrate's mind a doubt that is to be respected;[1] and he enjoins, furthermore, that where there is a difference of opinion in the magisterial body on a given point, there must be no factious resistance of one or few officials to the judgment of the majority, since there is greater peril in blocking the wheels of government than in the transgression of natural law at an obscure point. But whatever the conception of magisterial duty when the question of morality is raised, there is no possible ground for hesitation when the question is merely that of the interest of the state; here the sovereign's command is binding, entirely regardless of the subordinate's view as to its expediency. In the field of politics proper, then, the supremacy of the sovereign will is not to be questioned; and this doctrine is clinched by the dogma, that in the presence of the sovereign the powers of all magistrates are suspended.[2]

The important economic problems involved in government and administration are treated by Bodin in connection with the prevention or regulation of revolution. A prime cause of sedition is to be found, he be-

[1] "Optima est cautio sapientum qui vetant id facere quod dubites iustum sit necne."

[2] Lib. III, cap. vi.

lieves, in great inequalities of wealth, but he dismisses with contempt the communistic doctrines of Plato and More.[1] Compulsory equality of wealth, especially of landownership, he points out, implies limitation of population; but such limitation he regards as an evil, since the more populous states are always the more prosperous. On the question of usury, on the other hand, Bodin holds to the ancient belief: the taking of interest is a social evil, promoting speculation and hence gross and unreasonable inequalities of wealth, and he regrets the tendency which he detects to tolerate low rates, since these, he thinks, will be merely an entering wedge for the great abuses of the system. The finances of the state he treats with considerable fulness,[2] both as to sources of revenue and methods of administration. Of the seven sources of revenue which he specifies,[3] the public lands and trade are most particularly discussed. As to the former, he goes fully over the ground that had long been a subject of controversy among publicists, and sustains the doctrine of a distinction between the public domain and the private estates of the sovereign monarch, with the former secure against alienation. Trade impresses him as on the whole an undignified instrumentality of revenue for a sovereign, and indeed as incompatible, in its

[1] Re vera nihil magis pestiferum ac perniciosum æquatione illa bonorum ac spe novarum tabularum cogitari possit. — Lib. V, cap. ii.

[2] Lib. VI, cap. ii: "De Ærario."

[3] The seven are: public lands; spoils of enemies; gifts of friends; quotas and contributions of allies; trade (*mercatura*); duties on imports and exports; taxation of subjects.

petty forms, with good social position even among subjects. That, especially since the discovery of the Indies, princes have found it convenient to supplement their incomes by this means, he does not deny; but he seems relieved to be able to state that the King of Portugal is the only monarch who notoriously derives a large revenue from mercantile operations. Yet seeking profit from legitimate commerce is not the worst fault that a monarch can exhibit;[1] and of all mean kinds of traffic, none seems so contemptible to him as the traffic in offices and dignities, which is scandalously prevalent in royal circles.[2] Finally, Bodin's consideration of the economic side of public policy includes a learned and lucid exposition of the coinage, with a vigorous denunciation of the practice of debasement.[3]

A function of administration which he thinks has never received treatment proportionate to its importance is that of treaty making with other sovereigns. The chapter devoted to this subject[4] embodies an outline sketch of that body of principles and practices which was soon to take form as international law. His classification of treaties and description of the processes through which they come into being need not detain us, but it is interesting to note the stress

[1] "Ego, vero, si statuendum mihi sit, principem mercatorem nolo; sin optio detur, mercatorem malo quam tyrannum, et patricios viros negotiari quam prædari."

[2] "Nullum sordidius, nullum turpius, nullum detestabilius magistratuum et honorum mercatura."

[3] Lib. VI, cap. iii.

[4] Lib. V, cap. vi: "De iure feciali deque fœderibus et pacis actionibus inter populos sanciendis ac muniendis."

which he puts upon good faith in observing them. His standpoint here is the law of nature, which prescribes the keeping of agreements; and his attitude is wholly different from that of Machiavelli. Yet a full consciousness of the wide divergence between theory and practice in the matter is indicated by his dictum that the surest guarantee of treaties is that the terms be as fair as possible, and by his citation, with approval, of the remark of the Consul Plancius: *Neminem populum diutius ea conditione esse posse cuius eum pœniteat.*

In conclusion, some light is thrown on Bodin's general theory of government by his earnest plea for such an institution as the Roman censorship.[1] Both the statistical and the disciplinary functions of this office he regards as indispensable to good government. The enumeration of the people and the ascertainment of their social and economic condition are of the highest importance for the proper administration of the revenue and police systems: nor can the objection be regarded that the census violates the privacy and exposes the business relations of the individual; no one whose life is what it should be can object to such a degree of publicity. The restoration of the moral discipline of the censorship, moreover, Bodin conceives as most desirable in the modern state, especially in view of the fact that the authority of the *pater familias* has lost its strength and efficacy, and the ecclesiastical control over conduct, exercised by the Pope and the clergy, has through abuse been brought into disrepute and to the verge of extinction. Referring

[1] Lib. VI, cap. i.

to the disciplinary authority exercised by the Calvinist elders (*antiquos*) in the Swiss cities and the opposition it has aroused, he lays it down peremptorily that either censors must be established or the ecclesiastics must be permitted to exercise the censorship; for in no case can so necessary yet so peculiar a function be satisfactorily discharged by the ordinary magistrates.

8. *Bodin's Place in the History of Political Theories*

That the philosopher who shaped the system sketched above must occupy an important position in the general history of politics goes without saying. As to the precise nature of this position opinions have varied somewhat. Janet seems to have been but little impressed with Bodin's philosophy and to have regarded it as an ambitious but unsuccessful attempt to improve upon Aristotle. Bluntschli and Gierke have attached greater significance to it, and in this respect their feeling has been shared by Hallam and Pollock. Baudrillart, whose exhaustive study of Bodin has greatly influenced all later students, was naturally enthusiastic about the subject of his essay, but still his appreciation often ran into a minor chord, and with characteristic French spirit he lamented Bodin's ineffective style. On one point, however, there is substantial and well-founded agreement among historians and critics, and that is, that Bodin brought back political theory to the form and method from which it had gone far astray since Aristotle, and gave to it again the externals, at least, of a science. Machiavelli had, as we have seen, taken

some steps in that direction. Bodin completed the movement which the Italian initiated. In Machiavelli the method of historical research and contemporary observation was fully appreciated, but in its application it became little more than mere empiricism, and produced rather a body of principles for the practical conduct of government than a theory of the state. Bodin supplied, from the stores of his systematic philosophy, precisely the factors which were lacking in the Florentine's make-up, and, without neglecting the principles of political practice, so grouped and correlated and generalized them as to present a comprehensive political science — *Staatslehre* as well as *Politik*. It is true that the Aristotelian *Politics* furnished many, if not most, of the categories which constituted the framework of Bodin's political science; but it is equally true that those concepts on which the French philosopher laid most stress and which gave its peculiar character to his system — sovereignty, the distinction of state from government, the influence of climate — were either slighted or wholly unknown in the system of the Greek. Moreover, the claim of originality and independence for Bodin is supported by the very fact that the historical method was common to him and Aristotle. For in philosophy based on history, the accident of chronology must profoundly affect different systems. The later writer has necessarily more history from which to generalize. Nineteen centuries separated Bodin from Aristotle — centuries replete with striking social and political phenomena. That any of the

Greek's principles could be approved by the Frenchman is a great tribute to the former's genius; that so many were modified or rejected is the surest basis for the renown of the latter. The influences which are most apparent where Bodin diverges from Aristotle are those of Roman history and law, Jewish tradition and recent European history.

In respect to the relation between politics on the one hand and ethics and theology on the other, Bodin corrects the Machiavellian conception of a total severance, and takes the middle ground in which here, as elsewhere, he believes truth is to be found. God and justice he assumes to be facts controlling political life and institutions, but he does not investigate closely the manner and extent of the control. A belief in a supernatural being he thinks important for the welfare of a state, though the details of the creed do not impress him as of great importance; and there is something Machiavellian in his dictum that as between superstition and atheism, the former is preferable from the standpoint of political science.[1] Justice and the moral law also are assumed by Bodin as fundamental to political science, and he works out an elaborate scheme of harmonic proportion which he thinks more accurately represents the principle of justice than do the geometric and arithmetic proportions set forth by Aristotle.[2] But this part of Bodin's

[1] Nam superstitio quantaque fuerit homines tamen in legum ac magistratuum metu et in mutuis vitæ officiis continet; impietas autem adversus numina omnem ex animo peccandi metum penitus evellit. — *De Republica*, IV, vii.

[2] *Ibid.*, VI, vi.

philosophy is accidental rather than essential. His real work, admirably accomplished, is to set the theory of the state and the science of government once more where Aristotle had placed it, on a foundation of history and observation, and by the side of, not dependent from, the sciences of ethics and theology. It is no discredit to the French philosopher that after his death his method of treating politics suffered nearly two centuries of eclipse, through the prevalence of the *a priori* and deductive systems introduced by Grotius and Hobbes. In Montesquieu Bodin found a worthy successor, and the dominant philosophy of the later nineteenth century placed itself once more within the lines which were marked out by these two.

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CHAPTER IV

CATHOLIC CONTROVERSIALISTS AND JURISTS

1. *The Catholic Reformation*

BODIN'S political philosophy had its source and inspiration in social and intellectual radicalism. Rejection of the influences that had determined mediæval institutions and beliefs was the substantial characteristic of his spirit in politics, as it was the characteristic of Protestantism in creed and worship. For the maintenance of mediævalism in political thought, as against the appeal to primitive Christianity by the Protestants and the rationalistic spirit of Bodin, we must turn to the great body of able debaters who sustained the cause of the old church against the innovators and upheld the Papacy as the symbol and guarantee of conservatism.

As has been stated above,[1] the progress of the Protestant revolt led eventually to the summons of a general council. In both its convocation and its proceedings the Council of Trent reflected unmistakably the political and ecclesiastical confusion that surrounded it. The expediency of holding a council, the place where it should meet, the form and order of procedure, the amount of recognition, if any, to be accorded to the adherents of the reformed creeds —

[1] p. 6.

these and many other questions involved the initiation of the council in a tangle of diplomacy that affected every court and every diocese in Europe. The fundamental issues about which all the complications centred were those that had been familiar to the Middle Age — whether Pope or council was supreme in the church, and what line divided spiritual from secular power. Strong as may have been the inclination of Pope Paul III toward such doctrinal and ecclesiastical reforms as should heal the schism in the church, he omitted no precaution against such a constitutional outcome as that of the Council of Constance.[1] The papal policy was triumphant in this respect, and both the procedure adopted and the decrees enacted at Trent left the supremacy of the Pope practically intact.[2] As to the relation between spiritual and secular jurisdiction, the council made no specific pronouncement, but incidentally to the decrees on reformation many evidences were found by the lynx-eyed secular lawyers of a tendency to encroach on a domain not ecclesiastical,[3] so that France never formally accepted the work of the council.

The purpose of those who promoted the conciliar movement had been twofold: first, to secure from a generally recognized authority a definition of doctrine on the points at which the most violent

[1] See *Political Theories, Ancient and Mediæval*, p. 258.

[2] *Cf.* Session XXV, Decree on Reformation, chap. xxi. In Waterworth, *Decrees of the Council of Trent*, p. 277.

[3] *E.g.* the rule prohibiting duelling prescribes as a penalty of violation the confiscation of the offender's property. See Waterworth, p. 274. *Cf.* Bungener, *Histoire du Concile de Trente*, II, 389 *et seq.*

attacks of the Reformers had been made, and thus to bring about a formal condemnation of the Protestants; and second, to abolish those abuses in administration and discipline which had furnished so strong a justification for the reforming movement. In accordance with this scheme the acts of the Council of Trent dealt systematically on the one hand with doctrine and on the other with discipline, and the legislation as a whole constituted a code which gave a great access of strength and unity to the old church in its conflict with Protestantism. In the matter of doctrine, the chief points insisted upon by the Protestants were explicitly declared heretical, and the ancient but ill-defined views on which the council took its stand were cast into the form of precise and rigid dogmas. In the matter of discipline, the inveterate practices of a corrupt and simoniacal nature connected with the bestowal and holding of benefices were abolished, a high degree of moral and intellectual fitness was prescribed for the clergy, and a host of detailed injunctions imposed upon the bishops the necessity of a strict personal regulation of the religious and moral affairs of their dioceses. Not the least significant article of the legislation was that requiring the establishment of seminaries for the education of priests.[1] The ignorance and incompetence of the inferior clergy had been a conspicuous item in the charges brought by the Reformers against the old order; and now that

[1] Session XXIII, Decree on Reformation, chap. xviii. Waterworth, p. 187.

the church was fully committed to a lasting conflict with those whom it denounced as heretics and schismatics, it was particularly important that the orthodox intellectual equipment of the whole hierarchy should be insured.

The reformation enacted by the Council of Trent was carried vigorously into effect by the papal curia, with great tonic effect on the whole ecclesiastical system. A noticeable check to the spread of Protestantism characterized the decades succeeding the council. The renewed strength of the Catholics was the resultant, of course, of many causes in addition to the work of the council. The only one of these which it is important to notice here is the activity and influence of the Jesuits. This order, founded just before the first meeting of the Council of Trent, began about the time of the final meeting[1] to make itself clearly manifest in the affairs of Europe. Whatever may be said as to the fundamental principles and the practical working system of the Society of Jesus, there is no room to doubt its astonishing efficiency in sustaining the cause of the Roman Church against the Protestant heretics. It can hardly be a mere accident that in the heated controversies centring about the religious wars in the latter half of the sixteenth and the first half of the seventeenth century the ablest and most dreaded protagonists of the Catholic cause were Jesuits.[2]

[1] The first meeting was 1545–1547; the last, 1562–1563.

[2] For an excellent monograph on this subject, see Krebs, *Die politische Publizistik der Jesuiten und ihrer Gegner in den letzten Jahr-*

There must have been in the system of the society something that either specially developed or specially attracted the ability that the cause demanded. A view of political theory during this period requires some attention to the doctrines put forth from the side of the reformed Catholic organization, and in considering these the writings of prominent Jesuits occupy the field almost exclusively. Their treatment of popular sovereignty and tyrannicide has already been referred to, and their most radical yet philosophical representative as to these questions, Mariana, has been considered. We have now to examine other aspects of their philosophy.

2. *Bellarmin and Barclay*

Of the controversialists who sustained the Catholic and papal cause in the period of the Catholic reformation, perhaps the ablest and certainly the most influential was the Jesuit cardinal, Robert Bellarmin (1542–1621). His *Disputations* covered systematically all the prominent issues of the time, theological, ecclesiastical and political, and constituted a formidable arsenal of arguments, which was freely drawn upon by the lesser supporters of the same cause. In this work he sets forth at some length his theory in reference to forms of government and sustains the following propositions: first, that of the simple forms, the most excellent is monarchy; second, that of monarchies, an organization in which the authority of the

zehnten vor Ausbruch des dreissigjährigen Krieges. Hallesche Abhandlungen zur neueren Geschichte, Heft 25 (1890).

monarch is modified and limited by organs representing the aristocratic and democratic systems, is preferable to simple absolute monarchy; and third, that regarded in the abstract and independently of all particular circumstances, the simple monarchy is without qualification the best. The "mixed form," to which he attributes relative excellence, owes its utility merely to the fact of the corruption of human nature. Disregarding this fact, monarchy pure and simple must be given the first place. With these ideas Bellarmin makes a rather vigorous attack on Calvin for the preference given by the latter to aristocracy.[1]

The whole purpose of Bellarmin's discussion of the forms of government is to reach a conclusion as to that which is best for the church. His conclusion is of course that the church should be monarchically governed, and that divine sanction of the papal monarchy was directly given in the establishment of the Petrine authority and succession at Rome. Like all the Jesuits, Bellarmin sustains in the most unqualified way the ecclesiastical sovereignty of the Pope. But more significant is his doctrine as to the relation of the spiritual to the secular authority. In his *Disputations* he lays it down with the utmost distinctness that the Pope has by virtue of his office no direct authority whatever in secular affairs,[2] and that it is no function of his to depose monarchs or to make or abrogate laws. Yet he holds that each of these acts and others even more sweeping may be

[1] Bellarmin, *Opera*, Tome I, Cont. III, Lib. I, cap. 1–4.
[2] *Opera*, Tome I, Cont. III, Lib. V.

performed by the Pope, and must be performed by him, when the salvation of souls is concerned. This conclusion and the reasoning by which it is sustained are identical in all respects with that of the more moderate supporters of the Papacy in the controversies of the Middle Ages.

Bellarmin indeed made no contribution to the philosophy of this matter, although the support which he gave to the revived mediæval theory caused a great sensation in both Protestant and Catholic circles. Indeed, his views as here set forth were not acceptable to the papal court itself. His elaborate and explicit denial to the Pope of direct authority in temporal affairs excited suspicion at Rome, and Pope Gregory XIII put his work on the Index. In a later work, the *Treatise on the Power of the Pope in Temporal Affairs*,[1] Bellarmin's distinction between direct and indirect authority in seculars is left aside and all stress is laid on the demonstration that, because popes, councils and theologians without number have ascribed temporal authority to the Papal See, any denial of such authority is out of the question, and is inconsistent with orthodox Christianity.

This later work of Bellarmin was written in response to the teaching of William Barclay, a Scotch refugee in France, who, though a devout Catholic, was not a Jesuit. Barclay's attitude was that of antagonism both to the anti-monarchic doctrines of Protestantism and Jesuits and to the exaggerated

[1] *Tractatus de Potestate Summi Pontificis in Rebus Temporalibus. Opera*, Tome V.

pro-papal doctrine of the latter.[1] He represented the discontent felt by many good Catholics with the assaults directed by the Jesuits against the supporters of royal authority. To him the theory of popular sovereignty when sustained by the Jesuits was quite as dangerous as the same theory in the hands of the Calvinists. His positive doctrine was that of secular monarchy by divine right. His theory presented, however, nothing novel. The controversy between him and Bellarmin reproduced almost exactly, save for the later precedents and authorities adduced, the arguments employed in behalf of royal and papal supremacy respectively in the latter centuries of the Middle Ages.[2] But the prestige of the Papacy in temporal politics had dwindled almost to insignificance by 1600, while the power of the national monarchs had enormously expanded. Hence, with all the air of reality which was given to the pretensions of papal authority by the excommunication of Queen Elizabeth and Henry of Navarre, the controversy carried on with such vehemence and learning by Barclay and Bellarmin produced the impression of a mere academic debate, with but slight relation to actualities.

The question on which controversy raged at this time with the intensity of unmistakable reality was that concerning the right of tyrannicide. The Gun-

[1] Barclay's chief works were as follows: *De Regno et Regali Potestate adversus Buchananum, Brutum, Boucherium et reliquos Monarchomachos;* and *De Potestate Papæ.* The latter is in Goldast, *Monarchia,* III.

[2] *Political Theories, Ancient and Mediæval,* pp. 176 *et seq.*, 215 *et seq.*

powder Plot of 1605 and the assassination of Henry IV of France in 1610 were attributed to the teachings of the Jesuits by their adversaries. On account of the odium excited against the Society of Jesus the provincial assembly of the order at Paris formally repudiated Mariana's *De Rege,* in which the right of tyrannicide was so boldly propounded.[1] In the extreme and violent practical development of antimonarchic doctrine Bellarmin had of course no part, though his relative depreciation of royalty afforded some measure of support to the projects of the fanatics. Barclay, on the other hand, found in the likelihood of such subversive movements as actually occurred a strong support for his demonstration that the divine right of royalty was the sole effective basis for social and political order.[2]

3. *Spanish Jurists and Moralists*

The nearest that Spain ever came to making important contributions to political philosophy was in the sixteenth century, through a somewhat remarkable group of theologians who worked in the field of jurisprudence. This period has been called the Golden Age of European jurisprudence, and it was characterized by the innovating activity of such influential thinkers as Cujas in France and Bolognetus in

[1] This was in 1606. See Krebs, *op. cit.*, p. 49.

[2] Barclay's work against the monarchomachs was written with particular reference to Scottish and French conditions before 1600. After the assassination of Henry IV Blackwood, another Gallicized Scot, wrote in the same strain as Barclay. See Figgis, *The Divine Right of Kings*, pp. 130 *et seq.*

Italy, through whom the spirit of humanism was injected into the theory and practice of the Roman law. Spanish thought reflected but little, however, of the humanist influence, and seems to have been a product chiefly of that great expansion of dominion which accompanied the career of Charles V and the discoveries and conquests in the New World and the Indies. The list of distinguished names in the juristic literature of Spain during this period includes Vasquez, Soto, Victoria, Covarruvius, Molina, Ayala and Suarez,[1] of whom all but Ayala were primarily theologians. From the standpoint of political philosophy their works are of interest principally for the discussion of those broad doctrines of public law that lie about the boundaries of ethics and politics. With the detailed commentaries on private law we have in this place no concern.

It was in the treatises of these writers that systematic moral philosophy began to take form out of the mass of casuistry that had accumulated about the practice of the confessional. The law of nature assumed the character in which it became so widely influential through the work of Grotius. The law of nations (*ius gentium*), also, in the hands of the Spaniards, began to take on a modern aspect. Far-reaching questions of political justice and expediency were brought to the front by the contact with new lands and new peoples. The right of

[1] For particulars about these men see Hallam, *European Literature*, Part II, chap. iv, and Kaltenborn, *Die Vorläufer des Hugo Grotius*, cap. vi.

the Europeans to seize the lands and other possessions of the Indians and to subject their persons to slavery was taken up for debate, bringing in its train a great number of minor questions in respect to just cause and just conduct of war. Soto and Victoria elaborately refuted the doctrine that the Indians, being infidels, were without rights as against Christian nations, and Ayala, who served with the Duke of Parma in the Netherlands, sketched in rather full outline a theory of the rights of the war.[1]

The foundation of the philosophy which is set forth in all these writers is the theory of justice, of rights and of law that was formulated by Thomas Aquinas, from whom are taken by all alike the definitions and classifications of law and the important distinctions of *ius naturæ* and *ius gentium*. The method and style also of Aquinas are followed by the Spanish jurists, who thus both by the content and by the form of their systems prolonged the record of scholasticism. Yet through them chiefly it was that the large fraction of the civilized world which clung to the Roman church became familiar with the ideas which were to be for centuries dominant in political theory. A supreme and immutable law of nature, changeless by God himself, a *ius gentium*, through which private property and slavery were introduced, a state of nature antecedent to the state of corruption, and thus affording the type of perfection for all actual societies, — these constituted the first principles common to all the systems. With-

[1] For the heads of chapters of his work, see Hallam, *loc. cit.*

out regard to the various shades of distinction among the different philosophers who sustained and developed these principles, we may devote some specific attention to the work of that one of them who by general consent was the equal, if not the superior, of all the rest in intellectual and moral strength and casuistical subtlety. This was Francisco Suarez, the Spanish Jesuit.

4. *Suarez on Law*

Of the voluminous product of Suarez's literary activity his *Treatise on Law and God the Legislator*[1] is all that need be studied to understand his political philosophy. This work, while primarily devoted to jurisprudence, expresses nevertheless in its plan and scope, as well as in its details, the attitude of the old church in respect to the interrelationship of theology, ethics and politics, and the broad principles of conservatism in each of these fields. In spirit and in method the philosophy of Suarez is that of the Scholastics. He assumes consciously no more independent task than that of correlating and interpreting the doctrines which had by authority been made part of the Christian creed. His intellectual endowment and sympathies were very similar to those of Thomas Aquinas, and the *Treatise on Law* is essentially a development and exposition of the sections on law and rights in St. Thomas's *Summa Theologica.* Where Aquinas is clear, Suarez has no task but to repeat and

[1] *Tractatus de Legibus ac Deo Legislatore*, published in 1613. I have used a new edition published at Naples, 1872.

further illustrate his dicta; where Aquinas is unclear or incomplete, it is Suarez's aim to clarify and supplement; where Aquinas takes an untenable position, Suarez reverently and with the subtlest distinctions and discriminations proves that the master must have meant something different from what he said.

However unsatisfactory and unfruitful this subservience to authority may appear to the modern mind, the system which is presented by the work of Suarez as a whole is not less dignified — and who shall say less truthful? — than the systems of Hegel and Spencer, which have been so much more acceptable to a rationalistic age. The *Treatise on Law* has for its basis the broad conception that all moral beings — that is, all beings endowed with reason and free will — are determined in all their relations by law. These relations may be grouped as theological, ethical and political, and these groups have a unity in the nature of law itself. In defining law in its most general sense, Suarez follows Aquinas closely, though with some modification: it is "a just and permanent precept, applying to a community and sufficiently promulgated."[1] Emphasis is laid, as by St. Thomas and Aegidius Romanus,[2] on the volitional element in the concept. An act of will is essential, though a dictate of right reason is no less indispensable. The classes of law also are those of St. Thomas — eternal, natural, human and divine. The resources of

[1] Lex est commune præceptum, iustum ac stabile, sufficienter promulgatum. — *Tractatus de Legibus*, Lib. I, cap. xii, sec. 2.

[2] See *Political Theories, Ancient and Mediæval*, pp. 193–194, 211.

Suarez's dialectic are severely taxed to adjust all the classes to the requirements of his general definition;[1] but the scholastic method and terminology, in which he is an adept, enable him to escape from all the intricate entanglements in which he finds himself. The ten books of his treatise deal with all the varieties of law, with interpretation, custom and privilege, with Canon law and the law of the Old and the New Dispensation. For our purpose it is important to consider with some care only his treatment of natural law, which is the basis of ethics, and human law, which embodies the chief principles of politics.

To the theory of the law of nature (*lex naturalis* or *ius naturale*[2]) Suarez devotes much attention, presenting the doctrine on which theology was to stand in the rising debate over the basis of morality. Natural law is that law implanted in the human soul through which right is distinguished from wrong. Its source is God the Creator, and its end is the good of the creature. Against the doctrine that the law of nature is indicative merely, showing but not enjoining what is right, Suarez maintains that it is both indica-

[1] For example, see the elaborate word-spinning through which the *lex æterna* is proved to be really law.—II, i–iv. His prime resource is usually authority. Thus for the designation of the eternal law as *lex*, "sufficit usus sanctorum et sapientum in tali materia."—II, i, 4. And again, for his assumption that the *lex naturalis* is true *lex*, he rests on the "communi sententia non solum doctorum sed etiam canonum et legum."—II, v, 3. *Cf.* also II, vi, 5: "Lex naturalis est propria lex; ita enim de illa loquuntur et sentiunt omnes patres, theologi et philosophi."

[2] He distinguishes very precisely between *lex* and *ius*, but concedes that usage has made the employment of the latter in the sense of the former in many cases inevitable. See I, ii, esp. sec. 5.

tive and imperative — that it embodies not only a judgment of human reason, but also a command of God; in other words, it is law proper.[1] Conceding that lying would be wrong whether God prohibited it or not, Suarez holds that in fact God has prohibited it — that his command and the judgment of human reason in the light of nature have always coincided as to what was right and what was wrong in conduct, and that, therefore, natural law is properly divine law, with God as the lawmaker.[2]

This body of law embraces various classes of principles and precepts, of which the most general and fundamental are present immediately to the consciousness of every man and cannot be ignored, while others, derived from these by intellectual processes, may never be known to men of inferior capacity.[3] In the former category Suarez places the Golden Rule and the injunctions of the Decalogue; in the latter the prohibition of fornication, of usury and of unjust price. But however its precepts are classified and to whatever extent they are apprehended, the law of nature as a whole constitutes a code of conduct which is the same for all times, for all places and for all conditions of men, and which, as the command of God, cannot be deviated from save at the peril of eternal

[1] II, vi, 4.

[2] The question debated at great length by Ockam — whether it is possible for God to command what is not in accord with right reason, *e.g.* to remove the negatives from the Decalogue — is discussed in II, vi, 12–15, and is answered by a very striking doctrine ascribed to Caietanus.

[3] . . . ignorari possunt invincibiliter, præsertim a plebe. — II, viii, 3.

damnation, even to those who know nothing of Revelation.[1] This law, moreover, is immutable; no one of its precepts may be modified or dispensed from by any human power, even the papal (*etiamsi pontificia*), and no injunction of human law, whether *ius civile* or *ius gentium*, has any force to modify the obligation of the law of nature.

This conception of an inflexible code, willed by God, manifested through the light of nature and interpreted by reason, exhibits the completed development of the idea on which Plato placed himself in his ethical system.[2] The rigidity of Suarez's system, as expressed in its abstract principles, is very materially modified, however, in his treatment of questions of a more practical character. While he insists that the precepts of natural law are in themselves immutable, yet he admits that modifications relating to the subject-matter (*materia*) to which the precepts apply may remove their binding force. Thus the obligation to return a thing held on deposit ceases when the circumstances have become such that the return would bring danger to the state. Again, though God himself may not, strictly speaking, grant dispensation from the precepts of the natural law, he may, by virtue of his proprietorship (*dominium*) of all created things remove the subject-matter from the field of the law's operation. It is by this principle that the command to Abraham to slay Isaac is reconciled with

[1] Dicimus negari non posse secundum fidem quin transgressio legis naturalis sufficiat ad æternam damnationem, etiamsi omnis supernaturalis lex ignoretur. — II, ix, 2.

[2] *Cf. Political Theories, Ancient and Mediæval*, p. 27.

the prohibition of the Decalogue: the killing of Isaac would have been an exercise of God's proprietary right over his creature, not a violation of natural law. On similar grounds the dispensation from the keeping of vows and oaths is explained as not involving any infraction of morality. In general, despite the rigorous and exact form in which the law of nature is cast in the abstract conceptions of its content, the distinctions and qualifications which are later introduced bring the moral code into practical harmony with those systems which claim an origin not in the will of an omniscient and all-wise supernatural being, but merely in the conclusions of human reason.

The adaptation of the strict law to the practical life of men by Suarez is greatly facilitated by his treatment of *ius gentium*. This law of nations he sets in sharp contrast to the law of nature, and thus secures a field to which he can assign any principles that are hard to fit into the latter system. Private property and slavery, for example, he makes no attempt to explain as in accord with natural law. Community of goods and liberty are "natural," by consent of all the authorities, and hence the almost universal institutions inconsistent with these he comfortably disposes of by classifying under the *ius gentium*.[1] The distinction between *ius naturale* and *ius gentium* is primarily that between what is morally necessary and what is socially expedient.[2] The precepts of the law of nature are inevitable deductions

[1] II, viii, 4.

[2] This distinction is worked out at great length in II, xvii–xx.

from nature; those of the law of nations are merely the concurrent judgments of all or nearly all peoples. The former are divine in origin; the latter are human. To disobey the former is wrong always and everywhere; to disobey the latter is wrong only when and where they have been incorporated in the institutions of the land.

This insistence on the distinction between *ius gentium* and *ius naturale* was an important element in the opposition of the theological to the rationalistic school of jurisprudence at this time. In the latter the tendency was strong to identify the two bodies of law, giving to morality a basis merely in the common experience and judgment of mankind. But more significant for the history of political theories is the contribution of this idea of the *ius gentium* to the development of the already rising science of international law. Suarez's elucidation of the content of the *ius gentium* expresses very clearly the substance of the new body of principles. In it he includes those rational practices that have arisen out of the inherent unity of mankind that makes itself felt amid all the diversity of states and peoples.[1] Here belong the regulation of commerce and other forms of intercourse between states, the formalities of war and peace, all manner of treaties, *etc.* Though clinging characteristically to the ancient dogma that the state is the "perfect" community, Suarez nevertheless declares, with earnest

[1] Humanum genus, quantumvis in varios populos et regna divisum, semper habet aliquam unitatem non solum specificam sed etiam quasi politicam et moralem. — II, xix, 5.

inconsistency, that no state is so self-sufficing as to be free from the need of intercourse with other states; and from this fact has arisen — through custom (*usus*), however, and not from nature — the conditions which are the basis of international law.

5. *Suarez on Government*

The theory of natural law embodies the doctrine of Suarez as to the foundation of politics in theological and ethical dogmas. The superstructure of his political theory is reared in his discussion of positive human law.[1] In the power to enact law, which includes all the lesser powers of jurisdiction and administration, he sees the essential principle of all political institutions, and his demonstration of the existence and rationality of this power not only embodies the doctrine familiar to scholastic jurisprudence, but also manifests the influence of the conditions which produced Bodin's theory of sovereignty and of monarchy.

The initial question is as to the power of man to prescribe rules of conduct — laws — to man.[2] If all men are by nature free, how shall one have authority over another? Suarez answers, with Aristotle and Aquinas, that man is a social being, that life in society is "natural" to him; but social life (*com-*

[1] Though in Suarez's theory all law is essentially "positive," *i.e.* set by the will of a superior, he admits, nevertheless, the distinction between that which is made known immediately by "nature" and custom, and that which is immediately prescribed by a definite being, whether divine or human.

[2] Utrum sit in hominibus potestas ad leges ferendas. — III, i.

munitas) necessarily implies some regulating power, and this power must be in human hands, because it is not "natural" for men to be governed politically by angels or by God directly.[1] The doctrine of Augustine and Gregory the Great, that human government was introduced on account of sin, Suarez thinks can be true only as to coercive and not as to directive power; for every community, even that of the angels, exhibits a gradation of its members, at least in respect to dignity and influence, and this gradation involves the relation of superior and inferior.

Assuming, then, that human governmental power is rational, in whom is it naturally vested? Not, Suarez answers,[2] in any single man, for the reason that all men are equally free; not even, as some one might suggest, in Adam and his descendants by primogeniture;[3] for God conferred upon Adam merely domestic, and in no sense political, authority. The only depositary of the supreme power that has a basis in natural right is the whole community, not any individual whatever. For a state is not a mere aggregation of human beings without order and without physical or moral unity, but a group of men constituted, either by special act of will or by general consent, into a social body for a common political end, and possessing thus a moral unity that

[1] Quia homines naturaliter non gubernantur politice per angelos neque immediate per Deum ipsum. — III, i, 5.

[2] III, ii.

[3] Suarez here anticipates a theory later made prominent by Filmer. See *infra*, chap. vii, sec. 7.

necessarily implies a regulating authority. Such a society without some general controlling power is logically inconceivable;[1] and as such power is in no specific individual, it must necessarily be in the whole society.

Here we have the theory of popular sovereignty in a form almost identical philosophically with that later set forth by Rousseau. It is the full fruition of the seeds embodied in the familiar dicta of Roman jurisprudence, that all men are by nature free and equal, and that the people are the source of law. But Suarez follows the Roman influence still farther and provides for the nullification in practice of the popular sovereignty that he has set up in theory. Looking at the supreme power as primarily the power to enact law, he can very easily endow the people with facilities for divesting themselves of their treasure. As the supreme power of the community had its source in the consent of men to form a society, so it may be alienated by a like act of will.[2] Thus Suarez opens the way for his demonstration of the familiar ecclesiastical dogma, that while monarchic government is on the whole the best, the monarch's power is in all cases derivable, not from any divine grant, but from the consent of the people.[3] Once given, however, this consent binds the givers to subjection indefinitely, save in case of injustice and tyranny.

[1] Naturali rationi repugnat, dari congregationem humanam, quæ per modum unius corporis politici uniatur, et non habere aliquam potestatem communem cui singuli de communitate parere teneantur. —III, ii, 4.

[2] III, iii, 6.

[3] III, iv, 1–5.

The further development of this doctrine, whereby the intervention of the Pope for the correction of secular acts endangering souls is duly justified, it is not necessary for us to follow. Suarez presents merely the long familiar dogmas of ecclesiastical jurisdiction and papal supremacy which were now being so vigorously revived in the interest of the old church. Like Bellarmin, Suarez explicitly denies to the Pope all direct power in political affairs outside of his own temporal dominions, but only to emphasize the indirect power through which the supreme interests of religion are to be conserved.[1]

In the detailed exposition of ultimate lawmaking authority (*potestas condendi leges civiles*) Suarez rounds out a conception that is closely analogous to sovereignty in Bodin's theory; and like Bodin, moreover, Suarez, while fully recognizing the legitimacy of popular and aristocratic governments, in which the supreme power is exercised by the whole or a part of the people in whom it naturally inheres, is chiefly interested in the monarchic form and tends often to confound prince and legislator. His ideal is the absolute monarchy of the times, and his illustrations, so far as he makes appeal to contemporaneous conditions, are drawn chiefly from Spain. As explicitly as Bodin he denies the character of law to the enactments of subordinate princes, provinces and cities, and ascribes it exclusively to the commands of those who have no temporal superior.[2] Again, like Bodin, he finds a limit to the supreme power, not only

[1] III, vi, 2 and 3. [2] III, ix, *passim*.

in the laws of God and of nature, but also in other fundamental principles. Bodin, as we have seen,[1] had recourse to certain vague *leges imperii;* Suarez, resting on his consensual theory as to the constitution of a supreme legislator, more logically finds the limit in the form and condition under which the transfer of power was made by the community.[2] There is, he says, a virtual contract between prince and people, through which the character of the grant is determined, and the terms of this contract may be expressed either in written documents, or in the custom of the land. This explanation is much more satisfactory than Bodin's, though it places Suarez fully in line with the contract theorists of the anti-monarchic school, with whose spirit and methods he manifests in general little sympathy.

The restrictions placed upon human legislation by divine and natural law find, of course, elaborate exposition in Suarez. Primarily, here, he follows Aquinas in recognizing that political sovereignty is independent of the faith or private character of a prince,[3] and that the laws of an infidel or an immoral sovereign are *prima facie* binding upon all his subjects. A valid ground for disobedience is to be found, not in the quality of the legislator, but in that of the law.

[1] *Supra*, p. 101.

[2] . . . Sequitur . . . etiam in principe supremo esse hanc potestatem eo modo, et sub ea conditione, sub qua data est et translata per communitatem. . . . Quia hæc est veluti conventio quædam inter communitatem et principem, et ideo potestas recepta non excedit modum donationis vel conventionis. — III, ix, 2.

[3] III, x.

A civil statute that contravenes natural justice is *ipso facto* void; for in the hierarchy of the laws the precepts of nature are higher both in source and in effect than those of any merely human power.[1] The great end of political action is to make men good, and to this end the lesser utilities of social life must be subordinated. Against the doctrine, which he ascribes to Machiavelli,[2] that the chief end of civil legislation is to preserve and augment the power of the state, and that whatever conduces to this end is justified irrespective of its moral quality, Suarez enters an emphatic protest.[3] The utmost that is possible in civil law is in some extreme cases to permit, but never to enjoin, what is wrong.[4]

Of all the great array of concrete and special topics which are considered by Suarez in his discussion of civil law, a brief reference to a single one will throw much light on the general trend of his philosophy. The question of taxation (*tributum*) was, in his day, a question of burning importance, and was closely involved in the whole theory of the absolute monarchy. When the feudal revenues of the chief European kings had become hopelessly inadequate to the demands of the imperial policies that characterized the times, and no satisfactory system had been evolved to

[1] Cum ergo lex naturalis sit lex Dei . . . non potest lex civilis contra illam prævalere; debet ergo esse de re honesta seu consentanea rationi naturali, alias lex non erit. — III, xii, 4.

[2] III, xii, 2.

[3] ". . . omnino falsa et erronea est."

[4] Leges ergo civiles non præcipiunt iniqua; interdum vero permittunt aut tolerant ad maiora mala vitanda. — III, xii, 5.

supplement the deficiencies, questions of finance assumed great prominence in political debate. In the early seventeenth century Spain had already entered upon her decadence, largely because of defects in her financial system, and England was just at the beginning of that struggle over taxation which was soon to bring revolution. It was natural, then, that legislation respecting revenue should engage the attention of a philosopher like Suarez.

The abstract principle that the imposition of taxes must be conformed to the canons of justice he establishes with his usual dry formalism. Of more particular interest to us is his examination of the question, whether the consent of the subjects is essential to the justice of a tax.[1] This seems a somewhat modern topic for so mediæval a work as that of Suarez, but the immediate source of the debate was the existence of a Spanish law requiring that no new tax should be imposed except with the previous summons and consent of the realm (*nisi prius convocato regno et illis consentientibus*), and the contention of some that this provision embodied, not merely a precept of local expediency, but a broad principle of natural law. Suarez states this claim only to refute it. His method affords no ground for holding that consent of the payers is essential to justice in taxation. "This opinion . . . I find neither in common, canon or civil law, nor in the ancient authors; and therefore I do not think such a condition necessary of natural right." There is nothing, he argues, essentially evil

[1] V, xvii.

in the possession by a prince of power to impose just taxes at his discretion. Moreover, the general consent by which the sovereignty was vested in a monarch covers the special authorization to raise revenue just as it does that to declare war, to build roads and bridges, *etc.* If a state is really monarchic, full power to raise money must be in the monarch, and any participation by the subjects can be only the result of a benevolent concession by him.

This attitude of Suarez is entirely characteristic of the theological Catholic jurists, whose preoccupation was, in their doctrine of popular sovereignty, much more to secure a ground for the subjection of monarchs to the moral and spiritual dominion of the ecclesiastical power than to promote popular demonstrations against the political autocracy of the kings.

6. *Campanella*

To complete the notice of the political doctrine that prevailed in the ranks of good Catholics, some attention may be given to a philosopher who stood entirely alone in his time, and whose system is indeed unique among the philosophers of all time. Thomas Campanella (1568–1639) was a Dominican friar of southern Italy. Intellectually he was wholly out of relation to the normal spirit of his order, and found satisfaction in the ideas that had spread through Europe as the particular characteristics of the Renaissance. The general system of philosophy which he formulated was of a strongly materialistic type, with

hardly concealed leanings toward pantheism.[1] But with all the rationalism and materialism which permeated his thought, he never deviated from the profession of the strictest regard for the creed and practice of the Catholic church. The unique character of his system appeared in this close union of materialism with a narrow Christian theology. Campanella insisted always on a synthesis of philosophy and theology that had a particularly novel and grotesque effect in his treatment of politics.

The political doctrine presented in his systematic philosophy[2] is a rather confused collection of dogmas, many unexceptionable in clarity and practical worth, many vague and mystical, representing a vein that runs through all his thought. What is most distinctive and striking in his politics may be found best, however, in his Utopian work, *The City of Sol*[3] (*Civitas Solis*). This is in literary form a description of an hitherto unknown commonwealth by a Genoese sailor. In substance, however, it presents, first, the ultimate philosophical principle on which Campanella explained nature and history, *i.e.*, that all the phenomena of each could be summed up under the three principles, power, intelligence and love; second, a blending of Platonic with mediæval monkish ideas in

[1] See his *Realis Philosophia Epilogistica*, in four parts, treating respectively of "The Nature of Things," "Ethics," "Politics" and "Economics."

[2] In *Realis Philosophia*, Part III.

[3] Appended to Part III of the *Realis Philosophia*. Translated, with a few omissions that are not indicated, in the volume entitled *Ideal Commonwealths* in the Library of Universal Knowledge edited by Henry Morley. French unexpurgated version in the *Œuvres choisies*.

the conception of social organization; and third, the conception of papal autocracy as the ideal of political organization and government.

The City of Sol is represented as an absolute monarchy whose ruler is designated as Sol. This chief of the state is named for life by a college of magistrates, who combine, as does the chief himself, both political and religious functions in their official character. It needs, of course, no great penetration to discern that Sol's election, tenure and duties are precisely those of the Roman pontiff, according to the views of the extremist supporters of the papacy. For his chief ministers Sol has the three, "Potentia," "Prudentia," and "Amor." The first is in charge of all that pertains to war, diplomacy and whatever requires the application of physical force; the second superintends public instruction, the fine arts and public works; the third has in charge all that pertains to the perpetuation, preservation and physical improvement of the people. This administrative organization is merely an application of Campanella's metaphysics. Besides this system of magistrates, the constitution provides for two assemblies, one consisting of only the magistrates, who are of course at the same time priests, and the other including all the people. The first of these assemblies possesses all authority in legislation and in appointments to office; the second is limited substantially to passing on questions of peace and war.

While this scheme of constitutional organization expresses the general philosophy of Campanella and

his theory as to the indissoluble union of secular and religious functions, his scheme of social organization and action follows very closely the projects of Plato and Sir Thomas More. Campanella recognizes absolutely no family institution and no individual property. The life of the citizens is lived in common and they eat at common tables, although the grades of food vary according to the merit of the different classes of people. Like Plato, Campanella recognizes three of these classes, though the three do not correspond strictly to those of Plato, the middle class having for its characteristic the modern function of industry rather than the ancient function of military activity. The assignment of citizens to their respective classes is provided for as in Plato; that is, the priest-magistrates, which correspond to Plato's philosopher-guardians, are able through the strict supervision of the whole life of the citizens to determine with perfect certainty in what class each member of the state properly belongs.

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CHAPTER V

HUGO GROTIUS

1. *Protestant Precursors of Grotius*

TWELVE years after the publication of Suarez's *De Legibus* there appeared at Paris a treatise which, though no more learned or logical than that of the Spaniard and little different from it in many of its conclusions, was destined to have an enormously greater influence on the development of juristic and political theory. This was the famous work of Grotius on *The Law of War and Peace.* To the great Dutch jurist and his work has been attributed by general consent the foundation of the science of international law, in which is to be found the perfect fruit of the doctrine of the law of nature. Without detracting from the just fame of Grotius, it is necessary for the careful student to point out the currents that were manifesting themselves in various philosophical channels before he wrote and that set straight toward the system which he presented.

In the preceding chapter we have seen how extensively the law of nature and the law of nations were developed by the Catholic jurists. The substance of their doctrine was entirely in line with that of Grotius, both in general scope and in much of the detail. They wrought over the material transmitted by the

mediæval doctors of theology and presented it with all the paraphernalia of scholasticism and with the sanction of the Roman church. But to a very large and very intelligent part of the European public at this time scholasticism and all its works were becoming intensely distasteful, both through religious and through humanistic influences. Where this was the case the jurisprudence and incidental politics of the Spanish school could get no hearing and could produce no effect. If any development of natural or international law was forthcoming, it would have to be through philosophy that bore the impress of Protestantism or of humanism or of both. Grotius happily combined the requisite qualifications in both respects and received the glory that was the just reward of the combination. But before his day there were jurists who failed of securing this glory, not because they failed to detect and set forth the same principles which won distinction for him, but because their Protestantism was much more conspicuous than their humanism and because the bias and method of their theological training set almost as impassable a barrier to the spread of their influence as that which hedged in the Catholic philosophers.[1]

The particular line followed by these Protestant jurists in their treatment of the law of nature was that marked out by Melanchthon,[2] to whom they all

[1] The Protestant precursors of Grotius are treated in Kaltenborn, *op. cit.*, cap. vii; Abtheilung II of this work contains abridged reprints of the treatises of three little-known jurists who wrote on the *ius naturæ*, Oldendorp, Hemming and Winkler.

[2] *Supra*, p. 16.

referred with reverence. The content of the law of nature is to be found, they held, in right reason, supplemented and directed by the explicit injunctions of God in the Decalogue. The precise relation between the divine and the purely human elements in this law constituted a fundamental problem for the philosophers, who traced out with much elaboration the steps by which all the social virtues were deducible from the revealed commands of God.[1] The law of nature received at their hands the form of a pretty well defined code and thus gained much in concreteness and in assimilation to their general conceptions of law. Winkler, whose work[2] makes a perfect transition from Melanchthon to Grotius, enumerates twenty-one articles in which the law of nature is comprehended and on which the natural rights of men (*iura naturalia*) are based. His list includes the precepts of reverence for God and other religious duties, of self-respect and love of the human kind, of all the common family and social virtues, and of such political virtues as love of country, recognition of liberty and equality, and "liberality or community of goods" (*liberalitas seu communio bonorum*). Here appears very clearly that confusion of the moral virtues with legal rights which was to figure so prominently in the later theo-

[1] *Cf.* Oldendorp, who traces most of the excellencies of the Roman law to the Twelve Tables, which he says were taken over from the Greeks, who in turn had derived their principles from the Hebrews and thus through the Decalogue from God direct. Kaltenborn, *op. cit.*, Abth. II, p. 25.

[2] *Principiorum Iuris Libri V;* Kaltenborn, *loc. cit.*, esp. pp. 45 *et seq.*

ries of natural law and to play so large a part in the revolutionary movements of the next two centuries.

But the Protestant jurists distinguish as carefully as the Catholics between *ius naturæ* and *ius gentium*. The list of natural rights just given is in the field of what Winkler calls *ius naturæ prius*, which is entirely distinct from *ius naturæ posterius*, or *ius gentium*. Natural rights are eternal and immutable — not to be changed even by God himself.[1] But the rules of *ius gentium* are of human and not of divine origin. They became necessary because of the transgression of Adam. Prior to that, as Winkler explains, the *ius naturæ prius* was sufficient and men lived under it without conflict, but after the division of families and races, subsequent to the fall, a body of rules became necessary in order to regulate the relations between these, and thus arose *ius gentium*. The end of *ius gentium* is to protect and maintain *ius naturæ*. On this purpose are based all the principles and practices that have arisen among nations in connection with war. This conception of *ius gentium*, which appears with the utmost distinctness in Winkler, illustrates particularly well the tendency, which through and after Grotius became predominant, to designate by *ius gentium*, not the rules of private law common to all or many nations, but rather the rules of public law by which the relations between nations were regulated.

Without dwelling further on the work of the Prot-

[1] Iura naturalia esse æterna, immutabilia, adeo ut nec a Deo mutari possint, cum sint Deus ipse. — Winkler, *op. cit.*, Lib. III, cap. viii.

estant precursors of Grotius, it is evident that their philosophy was in substantial accord with that of the Catholics so far as general tendencies were concerned. The two bodies of thinkers, though following methods that were materially different, reached practically the same results. European jurisprudence as a whole was in the fifteenth and early sixteenth centuries moving toward an extensive readjustment of the lines on which both public and private morality were henceforth to be tested and developed. Objective conditions, both material and intellectual, were in 1625 favorable for a decisive revelation of this movement and for an effective appeal in its behalf, and the man was at hand who was as well as possible qualified to make both revelation and appeal.

2. *The General Conditions of his Work*

The profound impression made on the contemporaries of Grotius by his treatise on *The Law of War and Peace*,[1] and its continuing influence on the publicists of succeeding generations are commonplaces of literary history. What factors contributed to produce these effects are not altogether apparent to the modern reader of the volumes, and must be sought to a considerable extent in conditions external to the work in itself.

In the first place the personality of Grotius insured for whatever he wrote an extraordinary respect from

[1] *De Iure Belli ac Pacis Libri Tres.* I have used the text and abridged translation of Whewell, Cambridge University Press, 1853. The translation is not always trustworthy and must be used with caution.

the men of his own time. From infancy almost he had been a noted personage in the learned circles of northern Europe. Born of an aristocratic Dutch family at Delft, in 1583, and enjoying all the advantages of most careful training, he became noted in early childhood as an intellectual prodigy. At eight years of age his Latin verses attracted attention outside of his own family; at twelve a Greek ode of Pindaric quality in honour of the Prince of Orange won plaudits from the most erudite of a time when classical erudition was almost a fad; and at fourteen he crowned a university career at Leyden, under the guidance of the great Scaliger, with astonishing demonstrations of proficiency in mathematics, philosophy and jurisprudence. The way to distinction in scholarship and in public life lay clear before him as he matured, and he assumed quickly a place that proved his precocity to have been based on no evanescent mental endowment. Editions and translations of obscure works of antiquity, with a considerable list of Latin odes and tragedies, preserved and enhanced his reputation as a classicist, while an early recognized preëminence at the Dutch bar, together with his celebrated work on *The Freedom of the Sea* (*Mare Liberum*) and other studies in public law, established his fame as a jurist. At thirty-three, after holding various judicial and diplomatic posts, he became the chief administrative officer (Grand Pensionary) of West Friesland and Holland. In this position he became prominently implicated in the civil dissensions in the Dutch Republic that centred about the

theological disputes between Gomarists and Arminians and the economic and political antagonisms between the commercial aristocracy, headed by John of Olden-Barneveldt, and the agricultural and industrial masses, to whom Maurice of Nassau looked for support. Grotius, sharing the defeat that cost Olden-Barneveldt his life, was sentenced to perpetual imprisonment, but soon succeeded in escaping to France. There, under the patronage of Louis XIII, he resumed his literary career, and there he produced, in 1625, his greatest work. The misfortunes which brought him to France served no less than the prosperity of his earlier life in Holland to attract attention to his writings. His favour with royalty in France was not destined to continue long. With Richelieu he could find no *modus vivendi*, and accordingly he accepted an invitation of the Swedish court, where the enlightened Oxenstierna gladly welcomed him. As Swedish ambassador Grotius returned to Paris, and served there for nine years, till 1644, the year preceding his death.

Besides the fact of his remarkable intellectual personality, the general spirit of theological liberalism that pervaded all the works of Grotius appealed to a large and now rapidly growing body of thinkers and secured a respect for his opinions that was not necessarily based on their intrinsic soundness. That he was a devout Christian there can be no doubt whatever, or that he was wholly free from the narrowness and intolerance that, in the heat of the century-long conflict precipitated by Luther, had necessarily come to characterize Catholic and Protestant combatants

alike. His general attitude was somewhat like that of Bodin;[1] he willingly recognized and appropriated what was rational in the doctrines of either side, but he showed nothing of that spiteful spirit in which were conceived the systems of the Jesuits on the one hand, and of the Calvinist and Lutheran theologians on the other. The age of rationalism was in fact at hand, and Grotius, however unwillingly, promoted its coming. It was not his learned and ponderous disquisitions on theological themes that won the veneration of his public, but his groping after a standard of moral and political conduct that should avail for all times and all peoples, regardless of the particular religious creed of the Christian.

The need for such a standard was emphasized to all reflecting spirits by the trend of political movements in Europe in the early part of the seventeenth century. Though in several countries civil dissension based on the differences between Catholic and Protestant still continued in forms more or less intense, the religious element in the controversies tended steadily to become insignificant as compared with purely secular issues. Even in Germany, where the Thirty Years' War broke out in 1618 on a religious quarrel, the development of the struggle brought soon into the foreground the political and dynastic controversies of the leading princes, and from the devastation of all central Europe was derived little more than the full consciousness, certainly not a settlement, of the fateful rivalry of Hapsburg and Bourbon. The whole history

[1] *Supra*, p. 82.

of the religious wars was evidence that the Christian precepts of charity and mercy had no power to mitigate the horrors of war between those who differed as to the manner of worshipping Christ, and the early years of the Thirty Years' War afforded a renewed demonstration of this fact. It was this that suggested to Grotius, whose nature was peculiarly mild and humane, the importance of grouping into a system the hitherto but little considered principles by which war could be rationalized and even Christianized. In his Introduction to *The Law of War and Peace* he says:

> I saw prevailing throughout the Christian world a license in making war of which even barbarous nations would have been ashamed; recourse being had to arms for slight reasons or no reason; and when arms were once taken up, all reverence for divine and human law was thrown away, just as if men were thenceforth authorized to commit all crimes without restraint.[1]

About this central purpose of defining the rights of war were readily shaped the various other elements, suggested by his juristic training and his diplomatic experience, which made his work an introduction to the newest branch of public law. For the foundation of his system he had to reshape the conceptions of *ius naturale* and *ius gentium*, as alone embodying legal rules of universal validity. In the development of the system he had to determine with precision who could properly be a party to a public war, that is, in whom was vested the sovereign power in a state; what were the grounds and the formalities

[1] Prolegomena, sec. 28, Whewell's translation.

through which a condition of war came into existence; and what were the formalities and the facts through which a condition of peace was restored. Thus his work involved vital questions of ethics and politics as well as the particular problems of international law, and the just fame which attached to him as the founder of the latter science gave by attraction a greatly enhanced weight to his less distinctive doctrines in the former fields. He became a venerated authority to a whole school of political philosophers, whose theories, following what was an accidental rather than an essential feature of his work, systematically relegated politics proper to the position of an addendum to a broader science — the law of nature and of nations.[1]

A final element in the reputation and influence of Grotius's work is doubtless to be found in his style and method. He illustrates in these respects the best and the worst features of the reaction against scholasticism. On the one hand, the philosophical jargon and the endless more or less empty logical refinements under which any deviation from authority was concealed by the later mediævals find no place in his work. His enunciation of principles is clear, straightforward and concise, and appeals to the intelligence of the untrained as well as of the trained

[1] From Pufendorf through a long series of philosophers the rubric under which political theory was found was: *De Iure Naturæ et Gentium*. The Germans, after escaping through the Kantian movement from the domination of the old Latin forms, preserved the spirit of the ancient system by their works on *Naturrecht;* and in Scotland until quite recently economics, politics and ethics were all embraced in the sphere of certain university chairs of "natural law."

reader. Nothing could be put more effectively than the justification and first principles of his system as they stand in the Prolegomena. It is the strength and simplicity of his style that has preserved the work of Grotius in the esteem of generations down to the present day. To his contemporaries, however, an effective appeal was made by a device which has in later days become repulsive, namely, a prodigious mass of quotations, more or less accurate and more or less pertinent, from ancient authors, — "philosophers, historians, poets and orators," — sustaining and illustrating, presumedly, the doctrines which he is setting forth. His assumption that the content of natural law is to be gathered in part from the opinions of such men affords a plausible ground for the incorporation of all this matter; but to the modern mind it seems like a barren display of learning, not more useful, save as an evidence of a transformation in taste, than the elaborate citations from obscure saints, jurists and theologians which burden the pages of the Schoolmen.[1]

The most influential and characteristic principles in the philosophy of Grotius, so far as it touches political theory, may be grouped under the three heads, the law of nature, the law of nations, and sovereignty and government; under these three heads, therefore, we may now proceed to consider them.

[1] How little is lost to the power of the *Law of War and Peace* by the omission of these quotations, may be judged from Whewell's abridged translation.

3. *The Law of Nature*

Grotius's conception and treatment of the law of nature embody no features that had not already appeared in the systems of other philosophers. He presented a far less profound and exhaustive discussion of the subject than that of Suarez, for instance. But, on the other hand, the spirit and method of the Dutch jurist were far better calculated to make fruitful the practical application of the theory. His point of view was more that of pagan antiquity than of later philosophy — of Cicero rather than Aquinas. Hence, though he failed to solve the ultimate problems of metaphysics and logic which were revealed by the subtlety of the Scholastics, he succeeded in formulating a moral and political doctrine that admirably satisfied the demand of enlightened minds to whom the theological system had become distasteful.

A suggestion of Grotius's general tendency is discernible in his employment of *ius naturale* rather than *lex naturalis* to designate the law of nature. All the effort which Suarez expended in proving that this law was statutory — a command of God, conforming in all respects to the most rigid conception of *lex* — was ignored by Grotius. Conceding that natural law and rights, like all human relations, might be regarded as willed by the Creator,[1] Grotius looked upon the system, however, as primarily and immediately a product of human reason rather than of

[1] Prolegomena, 12.

any will. He recurred to an ancient conception in classifying all law as (1) natural and (2) volitional (*ius voluntarium*[1]), and he treated the terms as exclusive of each other. In the former, reason was the characteristic element; in the latter, will: but obligation attached no more strictly to the one than to the other. Grotius chose deliberately the former species of law as the field of his investigations and looked to the cultivation of this field as the noblest work of jurisprudence.[2]

The law of nature he defines as "the dictate of right reason, indicating that any act, from its agreement or disagreement with the rational nature, has in it moral turpitude or moral necessity."[3] Acts falling within this category are right or wrong *per se*, and are thus distinguished from those acts which become right or wrong because expressly commanded or forbidden by human or divine authority. This natural law is absolutely immutable, so that it cannot be changed by God himself.[4] That the Almighty should make right that which is by virtue of reason wrong, is as inconceivable as that he should make twice two something other than four. In the fact that man is endowed with the power of reason lies the clue to an infallible moral guide. This is the

[1] The term commonly used by preceding philosophers was *ius positivum*.

[2] Prolegomena, 31, 32.

[3] Ius naturale est dictatum rectæ rationis, indicans actui alicui, ex eius convenientia aut disconvenientia cum ipsa natura rationali inesse moralem turpitudinem aut necessitatem moralem. — I, i, 10, 1.

[4] Est autem ius naturale adeo immutabile ut ne a Deo quidem mutari queat. — I, i, 10, 5.

possession of man by virtue of his humanity, not the peculiar privilege of any particular race or people. It is in some sense independent of all conception of a supernatural power. The rational nature would guide men even if there were no God, or if he had no interest in mortal affairs.[1] That God has in fact bestowed a revelation of his will upon certain men, does not place these above others so far as natural reason is concerned. Pagans, infidels and atheists are thus all enabled to stand on the platform constructed by Grotius. Yet the philosopher is himself, as already stated, a devout Christian and this his whole work abundantly shows.

The dissociation of natural law from Revelation, and especially the assertions, just referred to, as to its independence of God's will, drew upon Grotius the lively ire of the narrower theologians of all sects, and on the other hand gave great stimulus to the rationalizing spirit of the times. Despite his thoroughly religious and Christian attitude, his ethical philosophy was, in fact, essentially that which was developed by Plato, the Stoics and Cicero. He was wholly aware of the broad underlying trend of his system. In the Introduction to his work he dwells upon this subject at length, declaring his purpose to establish a new science on that foundation of rights and justice which is to be discovered, not in the fluctuating dictates of local or temporary expediency, but in the essential, universal and unchangeable quality of human nature. His primary

[1] Prolegomena, 11.

assumption is Aristotle's, that man is a political or social being, irresistibly impelled to live in intercourse with his kind. The power to reason — to generalize — is also inherent in human nature, distinguishing men from other animals. The test of rightness in human conduct, therefore, is rational conformity to the needs of social existence. No individual and no nation can predicate moral excellence of that conduct which conduces merely to an immediate and individual advantage. Self-interest, regardless of the interest of other men, is no rational criterion of right and wrong, just and unjust. Society — humanity — would be impossible under such a standard. The prescriptions of a wider code are inevitably implied in the existence of the race, and whatever reason shows to belong to that code is the content of natural law.

Grotius thus places himself solidly in opposition to the doctrine of which he takes Carneades as the ancient mouthpiece and of which Hobbes was within a few years to become so powerful a champion, that all law, justice and rights have their ultimate source in utility or expediency. Of civil laws and the rights based thereon — that is, the law of any particular state — utility, he admits, may be the *occasion;* but the *cause* is to be found, proximately in the compact by virtue of which any particular state exists, and more remotely in the natural impulse that renders social life inevitable, and the rational inference from this, that compacts are not to be violated. Human nature and reason, thus, constitute the original

fountain of all laws; utility is accessory; men form and maintain societies because it is their nature to do so, whether it is to their interest or not, though the special character of their social life is shaped by considerations in which interest and expediency play a large part.[1] Civil law, in other words, is immovably rooted in the law of nature.

The plan and purpose of *The Law of War and Peace* did not require an exhaustive treatment of natural law in all its aspects. Grotius aimed only to set forth the relation of this law to the purposes, methods and results of war. But even this restricted design brought under discussion in fact substantially all the important topics of social and political ethics. He had to demonstrate that war was in accord with natural law, under the principle of self-preservation;[2] to determine the extent to which war by subjects against sovereigns was rational;[3] to define the right of private property in things and its incidents,[4] and the extent and incidents of rights over persons, including the questions of government, marriage and slavery;[5] and he had, finally, to lay down the broad principles of the obligation of promises and contracts.[6] On the basis of the conceptions on these fundamental topics which he found derivable from nature itself he proceeded to classify and judge the practices which prevailed in the conduct of war, and to formulate conclusions which should rationalize and humanize them.

[1] Prolegomena, 16 *et seq.*
[2] Lib. I, cap. ii; *cf.* II, i.
[3] Lib. I, cap. iv.
[4] Lib. II, cap. ii *et seq.*
[5] *Ibid.*, cap. v.
[6] *Ibid.*, cap. xi–xii.

That Grotius's fixed and eternal law of nature embodies merely his own personal ideal — wise and noble, indeed, but nevertheless purely subjective — of the principles which would conduce most to the happiness of mankind, is apparent from his own treatment of the sources and the classification of these principles. The basis of the *ius naturæ* he places in notions which are so certain that no one can deny them without violence to his own nature — as clear to every man as what he perceives by his senses.[1] But it requires, as Grotius himself admits, a proper condition of the organs of sense, as well as other necessary prerequisites, in order that knowledge given by the senses be not deceptive : hence not every man, but only the perfect or normal man, is immediately conscious of the truths of natural law, and the standards of perfection or normality must be as diverse as individuals themselves. It is perhaps with some consciousness of the difficulty here that, in proving his doctrine as to the true rights of war and peace, Grotius resorts also to the opinions of philosophers and the testimony of historians.[2] A general harmony among the best minds of all times and places as to a given theory or practice must spring, he argues, from a cause of equal generality. This cause must be either that the accepted view is a necessary deduction from

[1] Principia enim eius iuris, si modo animum recte advertas, per se patent atque evidentia sunt, ferme ad modum eorum quæ sensibus externis percipimus; qui et ipsi, bene conformatis sentiendi instrumentis, et si cetera necessaria adsint, non fallunt. — Prolegomena, 39.

[2] He includes also poets and orators, but admits that the dicta of these classes are employed chiefly for ornament. Prolegomena, 47.

the principles of nature or that it is the deliberate choice of all men. In the former case the view falls properly under the law of nature; in the latter, under the law of nations (*ius gentium*).[1] The tendency to confuse these two distinct bodies of *ius* is censured by Grotius;[2] but the chief value of the distinction which he seeks so laboriously to maintain seems to lie in the facility it affords for sheltering his own opinions under the more dignified category of natural law. Thus of two institutions which have equally wide support in the approval of philosophers and historians, the one which he regards as reasonable will be part of the immutable law of nature, while that which does not satisfy his judgment will be relegated to the inferior position of mere *ius gentium*.

He provides, moreover, in the further explication of natural law itself, for great latitude in the admission of contradictory principles within the conception. *Ius naturale* is of two kinds, (1) pure (*merum*) and (2) peculiar to certain circumstances (*præcepta quæ pro certo statu sunt naturalia*). The former characterizes the primitive state of nature, which is assumed to have existed prior to political association, and the latter characterizes the period of fuller development, though it precedes all civil law.[3] Through this simple distinction[4] Grotius is able to

[1] Prolegomena, 40.

[2] The tendency was as old as the Roman imperial jurists. *Cf.* *Political Theories, Ancient and Mediæval*, p. 128. Also see Voigt, *Das Ius Naturale*, Vol. I, pp. 314–315, 423 *et seq.*

[3] *Cf.* II, viii, 1 and 26.

[4] The distinction is by no means original with Grotius, but is to be found in all treatises on natural law from Aquinas down.

bring both community of goods and private property under the head of the law of nature, and in numerous other instances to justify as "natural" institutions as diverse essentially as barbarism and civilization. The hypothetical immutability of the *ius naturale* loses, through this method, all power to restrict the subjective judgments of the philosopher.

4. *The Law of Nations*

In the distinction just noticed between *ius naturale* and *ius gentium* Grotius stood on practically the same ground with Suarez.[1] The latter had, moreover, indicated clearly enough that content for *ius gentium* which was the basis of international law. But Grotius, approaching the subject from the special standpoint of the warlike relations of nations to one another, proceeded in fact to develop far more fully than either Suarez or any other predecessor all the principles of international relationships, whether of war or of peace. Under the influence of his example the meaning of *ius gentium* soon became narrowed from "the law common to all or many nations" to "the law governing the intercourse between nations."

In early Roman usage the term *ius gentium* had applied to the institutions of private rather than public law — to the customs in relation to property, contracts, marriage, *etc.*, that prevailed among peoples not included within Roman citizenship. When under the Empire practically all these peoples be-

[1] *Supra*, p. 140.

came Roman citizens and the dual system of law became unified,[1] *ius gentium* survived as the designation of an ideal hardly distinguishable from *ius naturale*. Mediæval jurisprudence, however, found in the diversity of peoples and institutions in Europe conditions strongly suggestive of those under which *ius gentium* had originally come into existence, and hence manifested a tendency to revert to the original meaning of the term. But at the same time, because the field of private rights was so entirely covered by the prescriptions of divine and natural, canon and civil law, *ius gentium* was often conceived to apply particularly to the customs that characterized the intercourse of communities rather than of individuals, and especially of independent political communities. War was the preëminent feature of this intercourse in fact, and hence the practices of war became a prime element in the *ius gentium*. Scholastic conceptions on this matter were largely influenced by a passage compiled from the Roman jurists and transmitted by Isidore of Seville, in which *ius gentium* was so defined as to cover the broad principles of international relationships in war, but was distinguished from *ius militare*, which concerned itself with the more technical military incidents of hostilities.[2] This distinction, however, was by no

[1] *Political Theories, Ancient and Mediæval*, p. 128.

[2] Ius gentium est sedium occupatio, ædificatio, munitio, bella, captivitates, servitutes, postliminia, fœdera, paces, induciæ, legatorum non violandorum religio, connubia inter alienigenas prohibita, et inde ius gentium quod eo iure omnes fere gentes utuntur. Ius militare est belli inferendi solennitas; fœderis faciendi nexus; signo dato

means closely observed by mediæval philosophy when the subject began to be discussed. Under the influence of the conflicts between Christians and Saracens various religious and ethical aspects of warfare received attention from ecclesiastics and jurists in the thirteenth century, and were systematically presented by Aquinas in his *Summa Theologica*.[1] These were combined, during the next two centuries, with a multitude of technical military topics in treatises on war which were written chiefly by Italians.[2] In the sixteenth century the great Spanish jurists, as we have seen,[3] continued the development of this subject from the traditional point of view, while Bodin,[4] in a broader philosophical spirit, sketched the outlines of the new science to which Grotius was to give an independent character. The immediate predecessor of Grotius, however, in the discussion of the law of war was Alberico Gentili, an Italian Protestant who became professor of law at Oxford.[5] To this jurist, among others, Grotius fully acknowledges his indebtedness;[6] and in fact the

egressio in hostem vel pugnæ commissio; item signo dato receptio; item flagitii militaris disciplina si locus deseratur; . . . item prædæ decisio et pro personarum qualitatibus et laboribus iusta divisio ac principis portio. — *Etymologiæ*, V, 6. *Cf.* Carlyle, *History of Mediæval Political Theory*, p. 109.

[1] II, 2, 40.

[2] A concise account of these is given by Holland in his *Studies in International Law*, p. 40 *et seq.* *Cf.* Nys, *Le Droit de la guerre et les précurseurs de Grotius.*

[3] *Supra*, p. 134.

[4] *Cf.* esp. *De Republica*, Lib. V, cap. vi.

[5] For particulars about Gentili see Holland, *Studies in International Law*, p. 1 *et seq.*

[6] Prolegomena, 38.

Dutch writer had only to round out the sketch which his predecessor had supplied. Gentili (Latinized, Gentilis) dropped from the *ius belli* all the purely military topics that had appeared in the earlier treatises, and Grotius added to the residuum so large a mass of cognate topics as fairly to justify the identification of his work, though it still retained the title of *ius belli*, with the *ius gentium* as defined by Isidore.[1]

In Grotius's classification the law of nations (*ius gentium*) falls under the head of human and volitional law (*ius humanum voluntarium*). Its content is what has been accepted as obligatory by the consent of all or of many nations.[2] What is included under it is proved by constant usage and the testimony of the learned (*testimonio peritorum*). The occasion for such a body of rights is the welfare of that aggregate which includes all or many nations, just as the occasion for civil law is the welfare of the aggregate which consists of many individuals. No more in the case of a nation than in the case of an individual can regard for self-interest alone conduce to the highest welfare.[3] Yet it is not in the inevitable benefit that ensues, but in the natural impulse to social life, that Grotius places the ultimate source of the obligation to observe the law of nations. All mankind, or at

[1] Holland criticises Grotius for injecting the whole of the law of nations into a work on the law of war. *Studies*, p. 58.

[2] Quod gentium omnium aut multarum voluntate vim obligandi accepit. — I, i, 14, 1.

[3] Populus iura naturæ gentiumque violans suæ quoque tranquillitatis in posterum rescindit munimenta. — Prolegomena, 18.

least the great part of it, constitutes a society of peoples for which the rule of a general law is indispensable.[1]

Despite the effort of Grotius to discriminate between the law of nature and the law of nations, his failure is clear from the outset, and becomes progressively more obvious as his system is developed into its detail. Theoretically, what is rationally consistent with human nature would be the criterion of the one, and what is in use among all nations the criterion of the other. But, as we have seen, the rationality of a precept is in last analysis a matter merely of the private judgment of the philosopher; and similarly, in the case of the practice of nations, since uniformity and universality are not deemed discoverable,[2] the usages which constitute the *ius gentium* must be those of the nations which in the judgment of the philosopher are worthy of respect and imitation. But not even all the practices of such nations are to be recognized as valid *ius;* for Grotius takes pride in his distinction between those which create true rights and those which merely produce some external effect similar to that of true rights,[3] and also between those which are merely common to many peoples and those which are, in addition, essential to the bond of human society.[4] The net result of all this elasticity

[1] Certe et illa [societas] quæ genus humanum aut populos complures inter se colligat, iure indiget. — Prolegomena, 23.

[2] Except in some matters which Grotius says belong to the law of nature, not of nations. "Vix ullum ius reperitur extra ius naturale . . . omnibus gentibus commune." — I, i, 14, 1.

[3] Prolegomena, 41.

[4] II, viii, 26.

and vagueness in the ultimate standards of both natural and international law is to obliterate all distinction between them and to justify the tendency, which grew continually more manifest after Grotius, to blend the two systems into one, resting upon no deeper an ultimate foundation than the opinions of publicists, among whom Grotius himself always held a first place.

It is not within the scope of our study to follow out the doctrines of Grotius as to the details of the *ius gentium*. A few instances of his views may serve to illustrate some of the statements in the foregoing paragraphs.

War is regarded by Grotius as just when it is undertaken in defence of person or property. The question then arises whether the taking up of arms against a power which is developing so as to become dangerous, but has not yet become so, is permitted by *ius gentium*.[1] Grotius answers with a decided negative. Gentilis is equally emphatic in the affirmative. In such a disagreement of authorities the real law of nations becomes difficult to determine; but certainly if the mere practice of nations, apart from any other criterion, were to decide, Gentilis would appear to be correct. Yet Grotius might fall back on his distinctions, and claim that peoples who had resorted to this practice were not the better kind of peoples, or that such usage belonged to *ius gentium merum*, and not to the species which is essential to the society of nations.

[1] II, i, 17.

This latter species is very hard to distinguish from some kinds of *ius naturale.* Grotius holds, for example, that seizing a subject for the debt of his state is not contrary to nature, but he supports his judgment, not on reason, but on the practice of the Greeks and others as against the custom of the Egyptians.[1] And again, the rule that property taken in a war against pirates or by a king in a war with his subjects belongs to the captor, is, according to Grotius, a precept of natural law, and not, as Ayala holds, of the law of nations.[2] But the use of poison in killing one's enemies, while permitted by natural law, is forbidden by the law of nations, or at least by the law of the better nations.[3] And in speaking of poisoned missiles, the "better nations" become more definitely the "nations of Europe," and even more narrowly the better part of these.[4]

Though the division line between *ius naturale* and *ius gentium* is thus at times very obscure, the importance of discerning it is enormous; for grave violation of the *ius naturale* is good cause for war, while a mere failure to conform to the customs of even the best nations can hardly be so regarded. Grotius perceives the danger of confounding differences of custom with violations of natural law, and, with an apt quotation from Plutarch, cautions against wars in which the announced purpose of civilizing a people is a mere pretext to cover cupidity.[5]

[1] III, ii, 3, 1. [2] III, iii, 12.

[3] Ius gentium, si non omnium, certe meliorum. — III, iv, 15, 1.

[4] Ius gentium non universale sed gentium Europæarum et siquæ ad Europæ melioris cultum accedunt. — III, iv, 16, 1. [5] II, xx, 41.

Finally, the views of Grotius on slavery throw an interesting light on his treatment of the two kinds of law and rights. No man is a slave by nature — "nature" meaning "prior to some act of man or in the primeval state of nature";[1] but the establishment of the servile condition by compact, or as a penalty for delict, is wholly in accordance with natural law. Hence one who becomes a slave by failing to pay his just debts, or as a punishment for his own crime, is a slave *ex iure naturale.* But the enslavement of captives in war — even the innocent and those who have not surrendered — falls under the *ius gentium.* It is a custom introduced for the purpose of mitigating the rigours of war — *i.e.* is a substitution of servitude for death. But while Grotius feels bound to recognize this slavery as of the law of nations, he clearly feels some pangs about it. He points out that it has never been a universal usage, and that Christians do not enslave Christian captives, nor Mohammedans, Mohammedan captives. And in connection with the subject he introduces one of his most useful, but scientifically most suicidal, distinctions. There are many rights, he says, which are such only from the point of view of external judgment and not from that of their internal nature. The right of enslaving innocent captives in war is a right (*ius*) as to certain of its effects, but not intrinsically.[2] It is one of that class of acts which are

[1] . . . citra factum humanum aut primævo naturæ statu. — III, vii, 1, 1.

[2] III, vii, 6, 4.

called right because they may be done with impunity, not because they fall in the category of *ius* strictly so called.[1] In other words, Grotius distinguishes between what are now known as legal and moral rights, but insists upon applying the term *ius* indiscriminately to both. It is in neglecting to observe consistently the distinction between these that much of the obscurity and uncertainty is created in his conceptions of law of nature and law of nations.

5. *Theory of the State and of Sovereignty*

As has already been said, the more purely political doctrines of Grotius were incidental to his ethical and juristic theories; but though this treatment of the ideas of state and sovereignty was subordinate to that of the law of nature and of nations, the influence of his views has been scarcely less conspicuous in the one field than in the other. His political theorizing was narrowly limited in scope. With the art of government — the questions of organization and of administrative policy — he had nothing to do; but the largest conceptions at the basis of the theory of the state he was obliged, or at least he chose, to treat with some fulness.

The origin of political associations, as conceived by Grotius, shows a curious and at times confusing blend of the two theories which he declares in his Prolegomena to be wholly antithetical. Both the natural impulse to social life and the deliberate contract based on considerations of self-interest figure in

[1] III, x, 1.

his doctrine as to political beginnings. Though primarily his philosophy is Aristotelian, the influence of Roman jurisprudence and of leading currents in contemporary thought takes him into the lines of the contract theory, of which he has often since been represented to be the leading advocate and even the original propounder. Probably the true character of his thought was, though he nowhere distinctly formulates it thus, that while *society* is due to natural instinct, the *state* is founded in contract.[1] At all events, while he repeatedly declares social life to be the "natural" condition of man, he as often recurs to the idea of an ante-political "state of nature," both as a logical concept and as an historical fact.[2] This is the condition of man in which the pure law of nature (*merum ius naturæ*) rules, with every individual as executor of his own rights under it; for "public tribunals are due not to nature but to the act of man."[3] By nature (*naturaliter*) every one has a right to resist a wrong; but when civil society has been instituted for the preservation of public tranquillity, this right becomes subject to the prescriptions of the sovereign.[4] Against the sovereign the right of resistance is null, for the reason, among others, that those who instituted civil society deliberately willed

[1] He uses *societas* and *civitas* with some evidence of a distinction in meaning.

[2] He identifies it with the age of the Cyclopes and the Autochthones of classic fable and with the patriarchal age of the Scriptures.

[3] . . . iudicia publica non a natura sed a facto sunt humano. — I, iii, 1, 2.

[4] I, iv, 2.

their rights to the holder of supreme authority.[1] It is indeed to be observed, Grotius says, in most explicit assertion of the contract theory, "that originally men, not by the command of God, but of their own accord, after learning by experience that isolated families could not secure themselves against violence, united in civil society, out of which act sprang governmental power."[2] Such doctrine clearly justifies the inclusion of Grotius among the philosophers of the contract school; yet his teachings on this point are distinctly subordinate in his system, and he lays no such stress on the contract as the anti-monarchic writers of the generation before him or as Hobbes and Locke in the succeeding generations.

A definite theory of sovereignty was important in Grotius's system, inasmuch as the whole doctrine of public as distinct from private war hinged on the clear determination of a supreme authority in a state. His long discussion of this subject[3] reflects the influence of Bodin and Suarez, but differs widely from each, both in point of view and in details. Sovereignty he defines as supreme political power (*potestas civilis*), meaning by "political power" that "moral faculty of governing a state" under which are included functions of general and of special char-

[1] Hæc lex [of non-resistance] pendere videtur a voluntate eorum qui se primum in societatem civilem consociant, a quibus ius porro ad imperantes manat. — I, iv, 7, 2.

[2] Notandum est, primo homines non Dei præcepto, sed sponte adductos experimento infirmitatis familiarum segregum adversus violentiam, in societatem civilem coiisse, unde ortum habet potestas civilis. — I, iv, 7, 3.

[3] Lib. I, cap. iii.

acter, of public or primarily of private interest, and functions performed either by the sovereign immediately or by persons commissioned by him. This supreme power is said to be vested in him whose acts are not subject to the rights of any other, and cannot be rendered null by any other human will.[1] In a broad sense the holder of sovereignty is the state (*civitas*), but specifically the holder (*subjectum proprium*) is one or more persons designated by the law or custom of the people. It is with the latter of the two senses that Grotius concerns himself almost exclusively, and in the development of his thought on juristic lines the sovereign power takes definitely the form of a right — the *ius regendi* or *imperandi*, as he frequently calls it — attaching to a person or persons like any private right, and subject to similar rules. Thus sovereignty may be possessed, he holds, like a piece of land or a right of way, either in full ownership, in usufruct, or for a limited term only. The conqueror in a just war holds it *pleno iure;* most elected and hereditary kings, in usufruct; and such officers as the Roman dictator, for a limited term.[2] As against the wholly different doctrine of Bodin,[3] Grotius contends that these various forms of holding the supreme power imply no distinction in the essence of the concept; between the holder *iure pleno proprietatis* and the holder *iure temporario* there may

[1] Summa illa dicitur cuius actus alterius iuri non subsunt, ita ut alterius voluntatis humanæ arbitrio irriti possint reddi. — I, iii, 7, 1.

[2] I, iii. 11.

[3] *Supra*, p. 97. Grotius does not mention Bodin in this place, however.

be a difference in dignity (*maiestas*), but there is none in actual power (*imperium*); each is alike the ultimate and irresponsible wielder of governmental authority. Moreover, Grotius holds that sovereignty is real when possessed under promises made to God (by oath) or to subjects, even if there is a distinct stipulation that violation of the pledge shall involve loss of the power, though he admits that there is in a sense a limitation here.[1] And finally, the supreme power, though in itself a unit, may be divided in possession; as, for example, between king and people.[2] It is not strange, after so peculiar a medley of contradictory attributes, that he admits protected and tributary powers and feudal vassals to the category of sovereigns, with the confession that there seems to be in their cases also some qualification in respect to dignity.[3]

That Grotius's conception of sovereignty falls short, in respect to logical precision and coherence, of that of Bodin and Althusius, is self-evident. A power that is supreme, yet bound by pledges; that is at once a unity and divisible; that is complete, yet limited to usufruct and terminable at a fixed time; and that inheres equally in protector and protected, in lord and in vassal, — is a confusing kind of concept. Much of the obscurity in Grotius's theory is removed, however, when we view his doctrine in the light of two purposes which run through all his thought: first, that of so defining sovereign as to determine where lies the criterion of public and

[1] I, iii, 16, 1 and 2. [2] I, iii, 17, 1. [3] I, iii, 21–23.

formal, as distinct from private and informal, wars; and second, that of combating, in the interest of peace and public order, the doctrines of popular sovereignty. Not only the custom of the time, but also every consideration of humanity, warranted the ascription of technical regularity to the wars of rulers possessing less than the widest powers; and the recognition of sovereign dignity to pretty much any kind of prince was an obvious support for the general attitude of depreciation in respect to the people.

A polemic against the idea that the sovereignty of the people is an essential principle of political science occupies a prominent place in Grotius's work.[1] A people, he holds, may choose what form of government it will; but having chosen the full monarchic or aristocratic form, its own function is ended. Just as a man may make himself a slave, as appears from the Roman and the Hebrew law, so a people may irrevocably transfer to one or more persons the right of governing it.[2] This transfer may be based on the best of reasons — dangers so imminent as to warrant the extremest steps to avert them. Or, Grotius argues, the subjection may depend ultimately on the principle which Aristotle laid down as to individuals who are by nature slaves: there are peoples also who are by disposition fit only for subjection.[3] Or again,

[1] I, iii, 8, 1 *et seq.*

[2] Quidni ergo populo sui iuris liceat se unicuipiam aut pluribus ita addicere ut regendi sui ius in eum plane transcribat, nulla eius parte retenta. — I, iii, 8, 1.

[3] "Populi quidam eo sunt ingenio ut regi quam regere norint rectius."

the right of ruling a people may be acquired, like rights of private property (*dominium privatum*), through just war. In all these cases, of which history furnishes copious illustration, the doctrine that sovereignty is in the people is wholly untenable. And no less so, Grotius continues, is the doctrine that the end of all government is the good of the governed. That such is in fact the end very often kept in view, he concedes; but this does not necessarily follow from the nature of government, and hence it affords no ground for the contention that the people are above their rulers.[1] A monarch, and especially a monarch with sovereignty in full proprietorship, may rule, like the master over his slaves, for his own interest, or, like the husband over the wife, for the joint interest.

The right of governing, in short, or sovereignty, is independent in all respects of the interest or the judgment of the subjects. Its attributes and its application are closely assimilated by Grotius to those of private property (*dominium*), and it may even, he holds, be transferred by sale or bequest, though when it has been voluntarily bestowed on any one by the people, he conservatively judges that the right of alienation is not necessarily to be presumed. That this patrimonial conception of governmental power is inconsistent with liberty and makes free men the subject of commerce, he denies with some warmth.

[1] "Non nego in plerisque imperiis respici per se utilitatem eorum qui reguntur . . . sed non ideo consequens est . . . populos rege esse superiores."

Personal liberty and political liberty, he argues, are wholly distinct ideas; a people, like an individual, may enjoy the one to the fullest extent, but lack the other. When sovereignty is transferred, the transaction has for its subject, not men, but the right of governing men.[1] The personal freedom of the people is not affected.

With such a theory of sovereignty as has been described, Grotius could hardly be expected to provide for any right of resistance in subjects. They have by natural law, he says, no recourse against wrongs received from a sovereign. A command that is in conflict with the law of God or of nature must not be obeyed, but the consequences of disobedience must be endured without resistance.[2] Social life is impossible on any other basis. Such is his doctrine as to unquestioned sovereigns in full right. For other cases he works out a scheme, modelled somewhat on Barclay, which seems at some points to trench upon his theory of sovereignty, and to attribute to subjects rights of resistance that are incompatible with the far-reaching scope of the *ius regendi.* As to usurpers, even, Grotius inclines to hold the right of resistance to be very limited and the expediency very doubtful. Man of peace as he always shows himself to be, he nevertheless feels that the situation is grave indeed when a choice has to be made between peace and liberty.[3]

[1] Non ipsi homines alienantur sed ius perpetuum eos regendi, qua populus sunt. — I, iii, 12, 1 and 2. [2] I, iv, 1, 3.

[3] Profecto gravissima cum sit deliberatio libertas an pax placeat. — I, iv, 19, 2.

6. *The Place of Grotius in the History of Political Theory*

The foregoing review of leading features of *The Law of War and Peace* confirms the statement made at the beginning of the chapter, that the distinctive work of Grotius was rather upon the foundations than upon the superstructure of political science. In the acute analysis of governmental organization and policy, such as was made by Bodin and in some measure by Machiavelli, Grotius manifested no interest. Nor was this attitude inappropriate in a work dedicated with fulsome eulogy to Louis XIII of France. For just in proportion as the idea of absolute monarchy was realized, the details of its operation were removed from the field of philosophical investigation, and conclusive demonstration that the sovereign monarch ought to conform to the law of nature and of nations was looked upon as an adequate substitute for curious inquiry as to the actual extent of such conformity. This general tendency in political theory, which was destined to prevail on the Continent for a century, must be regarded as largely due to the Dutch philosopher. Not that he was in any sense the originator of the method; it was conspicuously characteristic of the whole scholastic philosophy and of the theological jurists who transmitted scholasticism to the seventeenth century. What Grotius did was, to give to speculation on these same lines a character that was eminently adapted to attract the more liberal and rationalistic elements among the Protestants and also

the devotees of the new learning which was in his day dominant in the intellectual life of northern Europe. He thus became a leader of thought in those countries which, for better or for worse, were destined to assume the chief place in respect to political activity, progress and influence.

The greatest positive contribution of Grotius to political science was, of course, his formulation of a scheme of rights and duties applicable to the relations of nation to nation. In this achievement he conformed very exactly to the manifest needs of his time. At the beginning of the seventeenth century the last principle of unity that had retained any vital force among the peoples of Europe — a common religious worship — had disappeared. Where Christianity had previously served as a basis for the recognition of common interests and common duties, at least as against the Turk, two groups of nations now stood, each denying to the other the name of Christian. The distinction between believer and infidel had become less important politically than that between Catholic and Protestant. A new and non-religious ground was needed for international rights and duties. Grotius sought and found this in the same law of nature that had served a similar purpose in the days of Alexander the Great and of the Antonines. Like the Hellenes and barbarians of the earlier time, and the Romans and provincials of the later, the divided and warring peoples of western Europe were taught that they had common rights and common duties under the sway of universal nature and

reason. But ancient cosmopolitism and modern internationalism differed from each other in the respect which is indicated by the names. The unit of the one was the individual man by virtue of his humanity; the unit of the other was the politically organized group of men by virtue of its sovereignty. It was because of this difference that the *ius gentium* was so prominent by the side of the *ius naturæ* in the philosophy of Grotius, and it was because of the essential sameness of the two that ultimately the former, as *ius inter gentes*, in a large measure supplanted the latter.

By his doctrine of sovereignty Grotius wins no special place in the development of political theory. He ranges himself with Bodin, Suarez, Barclay and the other advocates of monarchy, and hardly strengthens the case that they had already presented. From the scientific point of view his influence on this phase of theory was distinctly reactionary; for his treatment of sovereign power as a private right, subject to the rules of private law, introduced an element of confusion into the conception that has been perpetuated, under the influence of his great name, to the present day. Yet there can be no doubt that his theory had a very plausible support in the conditions of his own time, when the growth of monarchy out of feudal institutions was attended by many suggestions of a patrimonial interest pertaining to the monarch.

In marked contrast with the character and tendency of his doctrine as to sovereignty stood the implications of his doctrine as to the state of nature

and the contractual origin of political society. On these points he was substantially at one with the anti-monarchic writers. His whole development of natural law, moreover, in its bearing on the relations of sovereigns to one another, turned largely on the principle of consent and compact, which was, as we have seen, the mainstay of the argument for popular sovereignty. Despite all the efforts of Grotius to avert such an inference, the inference by analogy was too obvious to be escaped, that the principles of contract law which he applied, as the law of nature, to the intercourse of independent members of the general society of nations, were equally applicable to the intercourse of independent members of any particular society of individuals. What was right and just in one case could hardly be denied the claim to righteousness and justice in the other. Hence it was that, while on one side the work of Grotius promoted the cause of absolute monarchy, on the other side it was a source of much aid and comfort to the advocates of limited government.

As the course of external events determined, the former element in his doctrine found a perfect field for its application on the Continent, where the relations of the absolute monarchs with one another afforded ample opportunity for the development of international law. The second element of his doctrine, on the other hand, found its immediate application in England, where, in the very year that the *De Iure Belli ac Pacis* appeared, Charles I ascended the throne. The dramatic era thus begun brought

England for the first time, at least since Wycliffe, into prominence as a source of political speculation, and made her responsible for theories that were, from every scientific point of view, revolutionary and of marvellous effects. Before closely examining these theories it will be desirable to review briefly certain earlier expressions of English political thought which have been passed over hitherto as without great importance and without influence on the general trend of development.

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CHAPTER VI

ENGLISH POLITICAL PHILOSOPHY BEFORE THE PURITAN REVOLUTION

1. *Development of the Constitution*

IN relation to the history of political theories, the position of England has a certain analogy with that of Rome. In the one, as in the other, an advanced stage of development in both public and private law was attained before the abstract principles involved entered to any important extent into the consciousness of the statesmen and lawyers. The English constitution, like the Roman, was a product of practical political sagacity, administrative ability and a spirit of legalism in the dominant classes; and the later system owed as little to the scholastic political theories that prevailed on the Continent, as the earlier system owed to the refinements of Greek speculation. The Plantagenet monarchy and the common law were as peculiarly the expression of English, as the Republican constitution and the *ius civile* were of Roman, conditions and character. Nor does the analogy stop with the formative period. English and Roman institutions both came ultimately under the analysis of speculative politics, and each system assumed, first to foreign and then to native philoso-

phy, the guise of abstract perfection. Montesquieu and Burke gave to the English constitution a position in the political theory of the eighteenth and nineteenth centuries quite comparable to that which was occupied throughout the Middle Ages by the Roman constitution as idealized by Polybius and Cicero.

The salient features in the growth of the English constitution[1] after the Norman Conquest, when the process becomes fairly clear, are, first, the establishment of monarchic power sufficiently strong to resist the disintegrating tendencies of feudalism; second, the development of a council, the organ of the great men of the realm, both lay and ecclesiastical, through whose necessary coöperation in the government the tendency to tyranny was checked; third, the union of this council with delegates of the lesser social classes, in a Parliament with far-reaching authority in taxation and general legislation; and fourth, the organization of the fiscal and judicial administration in such manner as to insure a permanent and important part to the popular organs of local government. The strength of the monarchic element was due to the harsh but efficient vigour of the Conqueror and his successors. For the restraints upon the king, both self-imposed to win popular support, and imposed by the barons and people for their own protection, we must recur to the coronation oaths, charters and pledges, from Henry I on, but especially of course to *Magna Carta* and the confirmations extorted in the wars of Henry III and Edward I.

[1] For an admirable summary, see Stubbs, *Select Charters*, pp. 1–51.

In the reign of the latter, at the close of the thirteenth century, Parliament had become in form and function substantially what it remained for centuries; and the guarantee which it embodied of the rights of the subject against the king was paralleled and supported by the jury system and a fairly independent administration of justice.

The course of very strenuous politics through which this point of development was reached nowhere exhibits any recourse to abstract principles. Of legalism there is much; of political science, none. The appeal of kings and barons alike, when the conflict is hot, is always to the ancient laws and customs of the realm, never to any general doctrine of monarchic or aristocratic excellence. Henry I, in his charter of liberties,[1] formally goes back to the law of Edward the Confessor. Henry II, in the Constitutions of Clarendon,[2] professes merely to record "the customs and franchises and dignities of King Henry [I] . . . and other kings." Finally, *Magna Carta* throughout assumes merely to declare the "law of the land," and to secure that law against invasion. The enormously important rights therein guaranteed to Englishmen have no speculative basis whatever, but merely the security that inheres in the appeal to recorded grant, to custom and to precedent.

Very much the same lack of theoretical interest appears in the relations of the English kings with

[1] Sec. 13. See Stubbs, *Select Charters*, p. 101.

[2] Text in Stubbs, *op. cit.*, p. 137. Translation in Gee and Hardy, *Documents of English Church History*, p. 68.

the church and the Papacy. England experienced as fully as any other land the effects of the policy represented by Gregory VII and Innocent III; but the settlement of the various issues that arose involved no contribution of philosophic doctrine as to the relative merits of secular and ecclesiastical authority. William the Conqueror brusquely refused Gregory's demand that he should do fealty, on the ground that such act had not been an incident of the relations between earlier kings and popes.[1] Henry I adjusted with Anselm, Archbishop of Canterbury, the problem of investitures on the purely practical lines which were later followed, though after a vastly more violent controversy, on the Continent. In the famous conflict between Henry II and Thomas à Becket, the dramatic features were due more to the personality of the chief actors than to the antithesis of principles, and the outcome had a much greater importance in law than in philosophy. John's humble submission to Innocent III might well serve as a most impressive realization of the pontiff's extremest theories as to spiritual and papal supremacy; but in England the affair presented itself as merely an episode in the vindication of the liberties and laws of the land.[2] So again, when Boniface VIII, at the end of the thirteenth century, made his demand for the exemption of the clergy from taxation,

[1] "Fidelitatem facere nolui nec volo; quia nec ego promisi nec antecessores meos antecessoribus tuis id fecisse comperio." *Cf.* Stubbs, *Constitutional History*, I, 285 and note.

[2] *Cf.* Green, *History of the English People*, I, 236.

Edward I of England was no less peremptory than Philip the Fair of France in setting the Pope at defiance;[1] yet the papal position had an influence in securing from the king a renewed recognition of the rights embodied in *Magna Carta.*[2] Finally the extortions and corruption of the papal administration at Avignon in the fourteenth century contributed to produce, not only the satires, grim and gay, of Langland and Chaucer, but also the statutes of Provisors[3] and Præmunire,[4] which were ultimately to furnish the ground for the severance of the English from the Roman church.

During the three centuries following the Norman Conquest only three Englishmen made noteworthy contributions to philosophic politics — John of Salisbury,[5] William of Ockam and Wycliffe. All of these, whether considered from the standpoint of the source or from that of the influence of their work, belong more to Europe than to England in particular,[6] and all have been treated in our earlier volume. Besides the evidence of the charters and statutes themselves as to the ideas that were at work in purely English politics during the formative period of

[1] *Cf. History of Political Theories, Ancient and Mediæval,* pp. 216 *et seq.*

[2] Stubbs, *Select Charters,* pp. 488 *et seq.*

[3] 25 and 27 Edw. III (1351 and 1353).

[4] 16 Rich. II (1393).

[5] He was for years secretary to the Archbishop of Canterbury, including the incumbency of Thomas à Becket.

[6] As to Wycliffe, I refer here to his Latin philosophic works. His translation of the Bible and his other works in English have, of course, quite another significance.

the constitution, we have a considerable body of semi-popular songs and manifestoes; but the tale that these tell is no other than that embodied in the formal documents — the tale of rights asserted and maintained on the basis of ancient law and custom.[1] A broader basis than this for justice and government enters into the consciousness of the English only very gradually. But it is through the jurists and their devotion to law that this progress is made, and the development of specifically English political philosophy has to be traced next through the history of English jurisprudence.

2. *The Common Law*

While in the twelfth and thirteenth centuries the constitutional structure of the English monarchy was taking form, the beginnings were made of systematic English jurisprudence. The policy of Henry II and Edward I created and made permanent the judicial organization through which the law of the land was to be administered, while three remarkably well-equipped members of the royal courts wrote treatises in which the content of that law was set forth with considerable scientific precision. Glanvil, Richard

[1] See Wright, *The Political Songs of England*. The notable Latin poem on the Battle of Lewes (p. 72) contains some striking passages on the general principles which characterize absolute and limited monarchy respectively, and on the relations of sovereignty to liberty and law, with conclusions adverse to royal absolutism. *E.g.*: —

> "Præmio præferimus universitatem;
> Legem quoque dicimus regis dignitatem
> Regere; nam credimus esse legem lucem
> Sine qua concludimus deviare ducem."

Nigel and Bracton[1] were the first to describe clearly many features of English legal practice and procedure, and thus they became the first authorities on the common law. Their work was contemporary with the great revival of Roman law on the Continent, and the influence of the Digest is discernible in the division and arrangement of their subject; but they seem to have yielded to no temptation to transfer to England the actual rules of the *Corpus Iuris*. The body of legal principles which they set forth is purely English, and the national character of the system was, at least when Bracton wrote, a conscious element of national strength. At Merton, in 1236, the assembled magnates of the realm declared "*Nolumus leges Angliæ mutare;*" and with this famous phrase declined to conform to the Canon law where it conflicted with their own. From the inevitably despotic tendencies of the Roman jurisprudence the law of England was kept free. That the will of the monarch should have the force of law was wholly inconsistent with the forms and theories of English legislation. Glanvil and Bracton lay it down in the strongest terms that the king, while subject to no man, is always subject to law; and the doctrine of the Digest as to the will of the prince is interpreted into insignificance.[2]

The law which thus early was recognized as the

[1] Their works were, respectively: *Tractatus de Legibus et Consuetudinibus Angliæ* (circ. 1190); *Dialogus de Scaccario* (circ. 1175); and *De Legibus et Consuetudinibus Angliæ* (circ. 1250).

[2] Hallam, *Middle Ages*, II, 334–335; citing Bracton, I, viii, and ix (*cf.* II, xvi).

pride of Englishmen was not, however, a well-defined body of rules or principles. Except as far as it was to be found in *Magna Carta* and a few other formal documents, it lay entirely outside of any statutory expression. The judgments of the royal courts, in cases brought before them in accordance with writs from the king's chancery, constituted the great proportion of this potent *lex terræ*. As distinguished from the enactments of Parliament, when the activity of this body in legislation became continuous, from special acts of the royal prerogative and from local custom, the legal rules which the judges of the king's courts employed came gradually to be known as the common law.[1] Being unwritten and, from the very nature of the case, inaccessible to those who were not familiar with the working of the courts, it gradually took on a character of mystery and hence magnificence, while the special class of lawyers who devoted themselves to its practice naturally contributed to the exaltation of their function into a cult. Precedent and the custom of the courts constituted the sole guide to the application of the law, which necessarily was extremely conservative. Refined distinctions and ingenious interpretation were the only recognized method of amendment, and this method produced an ever increasing complexity in the system. The royal chancellor had to develop an equity jurisdiction in order to afford some relief from

[1] Bracton uses *ius commune* and *lex communis* in a different sense. The sense defined in the text became established only in the fourteenth century. *Cf.* Pollock and Maitland, *History of English Law*, I, 156–157.

the more intolerable evils of the Common law, but the chancellor's equity proved only less narrow and insular than the strict law. Yet with all its technical imperfections, English law as a whole served admirably to exemplify and confirm the national type, and the Englishman's pride in his system was as sincere and at least as well justified as that of the Roman in his *ius civile*.

For nearly two centuries after Bracton wrote, no juristic exposition and commentary on English law appeared. The system moved on "from precedent to precedent," and all the novel and varying conditions that arose were met by the genius of the lawyers and the judges in stretching and twisting the old fabric to cover the new circumstances, or, as is the way of the law, in devising wholly new expedients and calling them by old names. In the fifteenth century, however, when the Wars of the Roses were desolating England, Sir John Fortescue, titular chancellor of Henry VI, but actually an attainted exile with his king, consoled himself in his banishment from England by various treatises on the law that he could not officially administer. In these are to be found some indications of a philosophic spirit and some effort to explain the legal and political institutions of England in terms of the systems that had long fixed the lines of Continental thought. Fortescue represents, however, the traditional as well as a newer tendency; for the very name of his best-known work embodies a strain of the English lawyer's complacency — *On the Excellence of the Laws of England.*[1]

[1] *De Laudibus Legum Angliæ.*

3. *Sir John Fortescue*

Besides the work just referred to, which was written about the year 1470, an earlier treatise, *On the Nature of the Law of Nature*, and a later, *On the Governance of England*, contain respectively the philosophic basis of his politics and his views as to certain practical questions of the royal administration.[1] His philosophy proper does not get beyond the commonplaces of scholasticism, drawn largely from Thomas Aquinas. The definition and classification of law is that of the *Summa Theologica*, and Sir John contributes obscurity rather than light when he undertakes to elucidate the thought of the master. Only where the legal rather than the broader philosophic aspect of the discussion comes to the front does his grasp of the subject appear certain and assuring. The law of nature he conceives as the universal code of all created things, dictated by God and embodying perfect justice. Under this law all secular affairs were directed prior to the establishment of customary law and of codes like that of Moses. Sir John, in other words, conceives of a state of nature antedating the establishment of government; and he very distinctly recognizes that ultimate power in government is explainable only through the natural law that prevailed in this first condition of things. "Royal

[1] The complete works, with translations of such as are in Latin and French, have been collected in a sumptuous volume by Lord Clermont, 1869. For separate editions of the *De Laudibus* and the *Governance*, see bibliography, *infra*.

power," by which he means sovereignty, "had its origin under the law of nature."[1] This supreme authority is not to be discussed, therefore, under the terms of human enactments, but as the source of those enactments.[2] And this view, logically sufficient and admirable, is fortified, as Sir John imagines, by an extensive appeal to what passed for history — the tales of Nimrod and Ninus and Belus, in the times anterior to Moses.

The most definite purpose of his thought comes clearly into view in his classification of the kinds of government. Assuming St. Thomas's distinction between royal and political rule (*dominium*),[3] Fortescue declares that a third form, combining these two, is shown by experience to be worthy of especial praise. This species, which he calls political and royal (*dominium politicum et regale*), characterized the Hebrew and the early Roman states, and it is especially illustrated in the government of England, where the king can make law and lay taxes only with the consent of the three estates of the realm, and where the judges are sworn to judge according to the law of the land even though the king command to the contrary.[4] The excellence of this form of government is a chief theme of all his works, and

[1] Potestas regia . . . sub sola . . . lege naturæ sumpsit exordium. — *De Natura Legis Naturæ*, I, v.

[2] *Ibid.*, cap. x.

[3] *Cf. Political Theories, Ancient and Mediæval*, p. 201.

[4] *De Natura Legis Naturæ*, I, xvi. *Cf. De Laudibus*, cap. ix; *Governance of England*, cap. i and ii. In the *Governance* he speaks of only two forms, the regal and the political and regal.

is proved and illustrated from every point of view. Absolute or regal monarchy, he explains, originated in the mere force and violence of the strong man, whose commands became in time the customary law of his subjects; political monarchy originated in the consent of the people, who, desiring social unity, achieved it by deliberately establishing the kingship, to the end that a royal head should harmonize all the vital functions of the body politic through the nerves or sinews of the law.[1] The form at once royal and political combines an absolute and untrammelled authority of the king in times of crisis with the rule of law in the normal condition of the people.

To this analysis of governmental organization and function in which Fortescue seeks to glorify England he adds a more lengthy and more clear and consistent comparison of the English with the Roman or Continental private law. At the very source he finds the advantage to be with the English; for in the Roman system it is the will of the prince that makes law, while in the English the will of the prince is but a single and subordinate element, the Common law consisting in customs that have come down from immemorial antiquity,[2] while the statutes are enacted by the consent of the whole realm in Parliament.[3] Superior at its source, the law of England is found by Fortescue to be not less praiseworthy in its content: trial

[1] For an extensive anatomical analogy between state and individual, see *De Laudibus*, cap. xiii.

[2] Sir John traces them back to Brutus and his Trojans. *De Laudibus*, cap. xiii.

[3] *Ibid.*, cap. xvii and xviii.

by jury, the absence of torture, and a variety of other features of substance and procedure are proved more rational and just than the corresponding features of the Roman law. For the concrete illustration of his comparison he presents a striking picture of the conditions among the peasantry in France and in England respectively,[1] based on his personal observation. Though the poverty and wretchedness of the French and the wealth and happiness of the English are each somewhat exaggerated, the method, nevertheless, of basing a philosophy of politics on actual observations rather than on mere juggling with the dicta of former writers entitles Sir John Fortescue to credit for something of the spirit which was soon afterward to shine resplendently in Machiavelli. For Sir John, taking France as an example of a kingdom under purely "regal" government and under the Roman law, attributes the misery of its people directly to these political and legal institutions.

In England, on the other hand, prosperity and contentment among the people are immediately due to the combination of "regal" with "political" government and to the beneficent workings of English law. The list of advantages which Fortescue gives as secured to Englishmen by the political system of the realm runs pretty close to the list of rights that were formally enacted into law after the Revolution. There is no intrusion by any one within the house of a citizen save with the master's will (*i.e.* no quartering of troops); no one takes another's property with-

[1] *De Laudibus*, cap. xxxv and xxxvi.

out the consent of the owner; no taxes, subsidies or other burdens are imposed and no legislation enacted save by the assent of the whole realm in Parliament; no one is brought to trial save before the regular courts or tried save by the law of the land; and no one is put in peril of losing his life or liberty or property except in accordance with that same law.

Fortescue's theory as to the reign of law in England was, like so many similar theories, something of an anachronism. It was enunciated just when the reign of the Yorkist line was preparing the way for the Tudor despotism. Though it is hard to see in the time of Henry VIII and his children much relation between Fortescue's theory and the actual system, the Lancastrian chancellor's doctrine became under James I a strong and oft-cited authority for the Parliamentary opposition. Sir Edward Coke, in particular, found much edification in the theory of one who was, like himself, an incarnation of the Common law, and through Coke the spirit of Fortescue was transmitted to all the adversaries of the crown in the Puritan Revolution.

4. *The Tudor Century: More; Hooker*

The Tudor régime in England, filling the sixteenth century, was as little favourable to political speculation as the age of Augustus at Rome. A single idea summed up the conscious creed of Englishmen, namely, that the interest and indeed the safety of the nation depended upon an unhampered and efficient

monarch. As against the material prosperity which flowed from this source, spiritual, legal and political beliefs and traditions were counted for nothing and were ruthlessly crowded aside. The lecherous whim of a brutal king and the filial fanaticism of a pious queen were of equal influence in transforming the whole ecclesiastical system of the realm. Not only the dignitaries of the Anglican church, but also the Lords and Commons in Parliament and the judges in the courts displayed a grotesque agility in juggling the constitution and the vaunted law of the land into conformity with the monarch's ever-shifting will. Nor did the dominion of the despot end with death; for the whole scheme of the succession to the throne was dictated by Henry VIII at the behest of his obsequious Parliament.[1] Thus not even that small shadow of restriction which is incident to a fixed principle of succession qualified the absolutism of the sovereign monarch. The security of life, liberty and property which Fortescue had so proudly proclaimed as the glory of Englishmen became grim irony, in presence of the attainders, imprisonments and confiscations through which Parliament, Star Chamber and High Commission carried out the royal will.

In the welter of Tudor absolutism there was room for no more than a single doctrine of political theory, and that was the doctrine of passive obedience. Some rather trivial expositions of this principle constitute the chief output of English speculation until

[1] 28 Henry VIII, c. 7; 35 Henry VIII, c. 1.

the latter part of Elizabeth's reign.[1] The only important exception was the famous *Utopia* of Sir Thomas More, which was published, though not in England, early in the reign of Henry VIII. That this work could not appear in England is significant of its relation to English thought. Both in substance and in method the *Utopia* lies wholly outside the range of contemporary sentiment and ideals. Its author was of that refined intellectual type which bore the influence of the humanistic movement throughout northern Europe. His character and spirit were totally out of sympathy with the influences which were dominant in the time of Henry VIII. The king's own personality, with its thin veneer of culture over an ever protruding beastliness, no less than the general materialism which led Englishmen to clothe such a monarch with despotic power, was a fair mark for More's gentle cynicism. The *Utopia* was the satire of a cultivated mind and refined spirit upon the society of which he was a part, but from which he was at the same time an alien.

More clearly discerned, and, in the Introduction to the *Utopia*, set forth with something of Machiavelli's explicitness, the devices by which despots gain their ends; but he manifested no slightest share in his Italian contemporary's complacency toward these devices, and indeed rejected with emphasis the suggestion of an opportunism which should tolerate, while striving to reform, the system which they produced. The root of

[1] For mention of some of these works, see Figgis, *The Divine Right of Kings*, pp. 93 *et seq.*

all the evils of society he finds to be the institution of private property, and the lesson of his satire is communism.[1] What Plato develops as an incident of his dialectic, but drops as a practical expedient, More makes, with apparently serious intent, the central doctrine of his work, and thus becomes the herald of the great modern socialistic propaganda. Other features of the *Utopia* which emphasize the aloofness of the author from his environment are the disparagement of war and military glory and a very remarkable theory of religious toleration. Of the topics peculiar to political as distinguished from social philosophy, More's treatment is of the slightest, and it is chiefly through the renewed impulse which the *Utopia* gave to the Platonic idealizing method in philosophic speculation that his work is of significance in the general current of political theory.

The influence of the Renaissance on the philosophy of politics in England is practically limited to the *Utopia*, at the beginning of the sixteenth century. Not till the end of that century did the influence of the Reformation make itself manifest. Under Elizabeth the English people, with obvious reluctance, abandoned the equivocal but characteristic position it had taken in the great conflict of the creeds and committed itself definitively to Protestantism. Promptly appeared the inevitable debate as to the true standard

[1] In the Introduction, which was really a postscript to the *Utopia*, he says: "I am persuaded that till property is taken away there can be no equitable or just distribution of things, nor can the world be happily governed." Translation in *Ideal Commonwealths*, edited by Henry Morley.

of faith and discipline that should replace the rejected authority of Rome. Puritanism, with an unmistakable Calvinistic leaven, began to assail the at least not invulnerable logical supports of the Anglican ecclesiastical order, and with the development of this assault the current of incidental political philosophy began to flow in the same channels as on the Continent. The heroes of French and Scottish and Dutch Calvinism could not receive their due meed of veneration from their English admirers without communicating in turn to the Englishmen that anti-monarchic doctrine which glowed on every page of Buchanan, Althusius and the *Vindiciæ contra Tyrannos*. And on the other hand, defenders of the established order and its authority had necessarily to accept that very far-reaching conception of sacrosanct royal power that was involved in the legal status of the monarch as "the only supreme head in earth of the church of England." But neither popular sovereignty nor the divine right of kings received thoroughgoing exposition by Englishmen till the Stuarts were on the throne.[1] In the reign of Mary, Poynet, the exiled Bishop of Winchester, and Goodman, a companion of John Knox, embodied their grievances in monographs proclaiming the right of resistance to tyranny; and absolutism, on the other hand, was preached by some of the holders of ecclesiastical preferment. The most characteristic philosophy of Elizabeth's reign, how-

[1] For the course of English thought in the Tudor century see the sketch in Gooch, *English Democratic Ideas in the Seventeenth Century*, pp. 34 *et seq.* *Cf.* also Hallam, Literature of Europe.

ever, was that which found powerful, though eminently dignified and temperate, expression in Richard Hooker's classic work, *The Laws of Ecclesiastical Polity*.[1]

Hooker wrote in defence of the Anglican church against the Puritans.[2] His theme, therefore, was church government; but his philosophy frankly recognized the identity of all governments, whether ecclesiastical or secular, in their fundamental principles; and hence the first book of his treatise, dealing with the nature and classes of law in general, embodied a considerable contribution to political theory. Churchman and conservative though he was, Hooker was brought by his philosophic temperament to set in conspicuous light certain rationalistic doctrines; and, as it happened, these were to become soon the most effective weapons in the arsenal of those who were assailing the church and the throne. His conception and exposition of natural law place him in the group of Protestant thinkers who opened the way for Grotius.[3] The basis and the origin of society and government Hooker explained by those dogmas that in one form or another characterized every conspicuous demonstration of anti-monarchic principles — the presocial state of nature, the formal consent and

[1] I have used Hooker's *Works*, arranged by Keble, 3d American, from the last Oxford edition, New York, 1851.

[2] The Preface, addressed to the Puritans, is a model of both historical and argumentative discourse, and in itself abundantly justifies the designation of "judicious," or judicial, which was early associated with the writer's name.

[3] *Supra*, p. 154.

contract for the institution of political life, and the subjection of rulers to a law which embodied the terms of the contract. The early state of men, he conceived, was full of envy, strife, contention and violence,

which would be endless, except they gave their common consent all to be ordered by some whom they should agree upon, without which consent there were no reason that one man should take upon him to be lord or judge over another.[1]

The terms, express or tacit, of the agreement in which government is constituted, form, Hooker said, "that which we call the Law of a Commonwealth," and are the conditions upon which the power of the state is exercised. Yet he cautiously evaded the anarchist's conclusion by declaring the original contract to be binding in perpetuity.

The act of a public society of men done five hundred years sithence standeth as theirs who presently are of the same societies, because corporations are immortal; we were then alive in our predecessors and they in their successors do live still.[2]

That the most useful doctrines of the revolutionists of his day should have been assumed by Hooker as the basis for a defence of established authority, shows him to have been more sensitive to the rationalistic currents of contemporary philosophy than clever as a controversialist. The theory of government based on consent could not sustain the cause of either monarchy or episcopacy in England, and the instinctive consciousness of this fact is what led James I to set

[1] *Ecclesiastical Polity*, I, x, (4).
[2] *Ibid.*, I, x, (8).

up and maintain with all his ponderous pedantry the doctrine that the king and the bishops alike had their authority, not in any sense from their subjects, but from God.

5. *James I and his Contemporaries*

The reign of the first Stuart in England was a period in which the various conflicting currents of political thought that had been running strong in neighbouring lands for fifty years gave first indication of a boisterous meeting where the calm of the Tudor absolutism had hitherto been almost unbroken. James was unable to maintain for the middle class of Englishmen that material prosperity through which the Tudors had won its support, and the discontent manifested itself in a marked increase of that ecclesiastical and constitutional opposition to the crown which had been noticeable, though insignificant, under Elizabeth.

On the ecclesiastical side the Puritans, met at every step by the requirement of conformity to a ritual that they regarded as tainted with papistry, tended steadily toward doctrines of church government that were wholly subversive of the existing order. Less violently than had been the case on the Continent during Luther's lifetime, but none the less certainly, the inevitably atomizing influence of the revolt from Rome became manifest in England. Presbyterianism, hot from Geneva and Scotland, was a satisfactory resort for many in the attempt to escape the rule of the bishops; but more disquieting

was the growth of the Separatists, or Independents, whose theory that any group of Christians, self-organized and self-supporting, could constitute themselves a church and worship in their own chosen way, was utterly incompatible with any conception of social order that respectable philosophy had yet evolved. The Presbyterian wing of the Puritans, in sustaining their views, needed to add nothing to the complete theories of Calvin and Knox, except a menacing recurrence now and then to the political teachings of the monarchomachs. From the Separatists, on the contrary, new and far-reaching doctrines were heard. Ecclesiastical authority lay, in their opinion, in the congregation that constituted the church. No power from without had authority to regulate the affairs of an association of Christian worshippers. As a voluntary union of individuals into a congregation for common worship was the essence of a church, so a voluntary union of such churches was the utmost that could be thought of as involved in the idea of a national church. Neither the bishops of the historical establishment nor even the synods and general assemblies through which the Presbyterians sought to preserve ecclesiastical unity, were regarded by the Independents as Christian institutions. So far as the secular authorities sought to sustain such ecclesiastical organs and compel their recognition by Christian subjects, the secular authorities were wrong and must not be obeyed. But passive, not active, resistance was all that the early Independents had in mind; and the migration to

Holland and to America to escape persecution by the episcopal authority is as significant of their feeling on the one side, as their unswerving fidelity to the royal allegiance is of their feeling on the other. Toleration by the government of their religious belief was the only qualification which they asked of the principle of absolute monarchy.[1]

On the side of purely secular affairs James I found himself confronted throughout his reign by annoying manifestations of self-consciousness in both Parliament and the judiciary. Each of these sought to assert for itself the position of an independent rather than merely an auxiliary organ of the state. On behalf of Parliament there was pressed forward the claim to participation in the laying of all kinds of taxes and in the determination of the general policy of the government. On behalf of the judiciary Sir Edward Coke set up the doctrine that the Common law, as law *par excellence*, was above the king, and that therefore the Common-law courts were superior in authority to such tribunals as depended only on the royal prerogative.[2] Against both these pretensions, that tended to trench deeply upon his absolute power, King James was able to oppose a vigorous and effective resistance. He lectured Parliament roundly for the impudence of its claims; he seized and imprisoned the members of

[1] For an admirable summary of the views of the early Independents, see Osgood, "The Political Ideas of the Puritans," in *Political Science Quarterly*, VI, 1 and 201; esp. pp. 18 *et seq.* Excellent also is Gooch, *English Democratic Ideas in the Seventeenth Century*, chaps. i and ii.

[2] Such as the Star Chamber and the High Commission.

the House of Commons who were most active in urging them; and he tore out of the records with his own hands the protest in which the House asserted its privileges. Coke also was brought to his knees and was made to feel the full force of the king's displeasure. Throughout the whole of these controversies, however, the opposition to the monarch based itself not on any abstract theory, but, with the traditional habit of English legalism, on the institutions and precedents of the law. *Magna Carta,* the supposed statute *De Tallagio non concedendo,* and the other famous documents of the early constitutional development — in short, the rights of Englishmen and not the rights of man — were almost the sole dependence of the Parliamentary opposition in the conflict on its secular side.

But while the opposition thus worked almost exclusively in the field of legalism, the king himself stood throughout on a well-developed philosophical theory. Before his succession to the English throne James had formulated a systematic statement of the divine right of kings in his short treatise entitled, *The True Law of Free Monarchy.*[1] This was the formal repudiation of the teachings which Buchanan, as the tutor of James, had embodied in the *De Iure Regni apud Scotos.*[2] The *True Law* had for its thesis the dogma that kings rule by divine right and that subjects have no recourse against them, and undertook to sustain this by arguments from Scripture,

[1] Published in 1598. An earlier work, *Basilikon Doron,* is a less complete expression of the same views.

[2] *Ante,* p. 56.

from the laws of Scotland and from the law of nature. The Scriptural argument traversed familiar ground. Saul's coronation, with Samuel's description of the character of kingly rule interpreted as a divine injunction to passive obedience, and the explicit commands of St. Paul and St. Peter were set forth in the mediæval spirit. From the history of Scotland was derived the conclusion that the king in that country was the supreme legislator and administrator and had power of life and death over every subject. The "law of nature" furnished merely some trite and dull analogies with the head and members of the physical body and with the relation of parent and child. In refuting, on the other hand, the theory that there must be some recourse against tyranny, the royal philosopher made a good case. He insisted that the dangers of anarchy were greater than those of tyranny: "Better is it to live in a commonwealth where nothing is lawful than where all things are lawful to all men." Further, while denying that there is implied in the coronation oath any contract between king and people, as the monarchomachs held, James argued that if there were such contract, it would be the height of injustice to ascribe to one party the right to say when the agreement had been violated; the only umpire would be God, and to Him, therefore, all appeals against tyranny must be made.

On this platform of a divine commission to rule James consistently maintained his stand against all pretensions to power by his subjects. His philosophical argument for absolute power was supplemented by

an habitual assumption in speech of the sacrosanctness and mystery of the royal function. Thus the judges who sought to restrain the proceedings of the prerogative courts were informed: "It is atheism and blasphemy to dispute what God can do. . . . so it is presumption and high contempt in a subject to dispute what a king can do, or say that a king cannot do this or that."[1] This extreme assertion of divine right was unquestionably determined in some measure by the king's perception of the close relation between the civil and the ecclesiastical agitators of his time. The revolutionary tendencies involved in the Puritan movement were neatly appreciated in his famous dictum at the Hampton Conference in 1604: "No bishop, no king." Authority from above and not from below was the principle, in his mind, of both ecclesiastical and secular order; and if episcopal authority should give way to that of chosen representatives of the congregations, the royal authority was likely to experience a like fate. The tendency toward open identification with each other of the subversive tendencies in both church and state achieved its perfect work in the reign of Charles I, who ascended the throne in 1625.

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[1] Prothero, *Statutes and Documents*, p. 400. *Cf.* also the speech to Parliament in 1610: "That as to dispute what God may do is blasphemy: . . . so is it sedition in subjects to dispute what a king may do in the height of his power." — Prothero, p. 294.

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CHAPTER VII

THEORIES OF THE PURITAN REVOLUTION

1. *Political Doctrine of the Parliament Party*

THE period of the Puritan Revolution has a twofold importance in the history of political theories. In the first place it gave systematic form and concrete expression to the legalistic ideas that had long constituted the bulk of English political philosophy. In the second place it took over into England the theories of secular and ecclesiastical politics that had been elaborated on the Continent during the Renaissance and the Reformation, blended with them the virile and invigorating influence of various notable English intellects, and prepared them for re-transmission to the Continent in the next century, when their dominion was to become undisputed.

Under Charles I the first phase of the revolution was that in which the constitutional issues between king and Parliament were fought to a finish in the triumph of Parliament. No more than in the reign of James I was the conflict here largely one of abstract principles. Though Charles asserted with persistent formality that he was answerable for his acts to God alone, yet this assertion most commonly appeared as the prelude to an exposition of the grounds

of his policy in the laws and constitution of England.[1] On the side of Parliament the Common law and the great pre-Tudor statutes were the whole foundation of its cause till its triumph over the king was complete. The Parliamentary argument embraced, however, two distinct tendencies of doctrine, which occupied very different positions in the history of political theory. The first consisted essentially in the long familiar idea that the king was subject to law and that law had its source, not in the monarch, but in the people,[2] represented by its historical organ, the Parliament. This was merely the anti-monarchic doctrine which had received very complete development, from the standpoint of Continental institutions, in the Huguenot and Jesuit thought of the sixteenth century. It was opposed, as we shall see, by arguments which repeated or developed those of Bodin and the other pro-monarchic jurists.[3]

In quite a different relation to the history of political thought stands the second tendency in Parliamentary doctrine. This was a distinctively English development, and consisted essentially in a closer definition of "people" in terms of the individuals composing the aggregate, and in a more precise ascription of rights to each of these individuals. How loath the advocates of popular sovereignty had always

[1] *Cf.* his speech proroguing Parliament in 1628. Gardiner, *Constitutional Documents*, p. 73.

[2] "Nation" appears frequently in the writings of the time as a variant for "people."

[3] For examples, see the argument of Whitelocke in Bates's Case (Prothero, *Select Statutes*, p. 351), and that of Berkeley in the Ship Money Case (Gardiner, *Constitutional Documents*, p. 122 *et seq.*).

been to conceive of the "people" as consisting of individuals rather than groups or associations, and to concede rights against the monarch to individuals rather than to estates or parliaments or corporations, has been indicated in our examination of the sixteenth-century theories. The "beast with a thousand heads" which had stimulated the invective of so good a friend of the people as Languet (or whoever wrote the *Vindiciæ contra Tyrannos*) was an ever present terror to the intellectual and political classes. Nor was it altogether of choice that the Parliament men of England gave an impulse to the movement which led straight through the "rights of Englishmen" to the "rights of man." Eliot, Pym and Hampden would have been entirely satisfied with the recognition of the political rights of their own social and economic class, which controlled Parliament; but the resistance of the king forced to the front the controversies which produced, first, far-reaching formulas of the legal rights of every Englishman, and then the transfer of the whole discussion from the domain of English law to that of the law of nature.

It was in connection with the religious phase of the Puritan Revolution, and especially through the development of the Independents, to be noticed below, that the tendency just referred to became most manifest. Yet its presence in the purely legal phase of the conflict was not obscure. From the very beginning of Charles I's reign Parliament insisted that the law of the land guaranteed various specific

privileges of every subject against interference by the king. In the Petition of Right (1628), which marked the end of the first stage in Parliament's progress to victory, the specific privileges which the king recognized were: exemption from certain forms of taxes save when imposed by act of Parliament; the right to learn, through the writ of *habeas corpus*, the cause of imprisonment or detention by royal order; exemption from the quartering of soldiers and from the processes of martial law.[1] During the period in which the king ruled without Parliament (1629–1640) various additions to and modifications of these legal rights were asserted and tested in the courts, and the custom developed of summarizing the rights concerned under the head of "person and estate," or "person and property." These were described as the "fundamental liberties" of the kingdom, and during the final conflict which ended in the overthrow and death of the king the formula assumed substantially the shape that remained familiar for centuries—"life, liberty and property." Thus the Grand Remonstrance of December 1, 1641, which was Parliament's platform for the approaching conflict of arms, declared that the abolition of the Star Chamber and the High Commission had most effectually secured men "in their persons, liberties and estates."[2] King Charles, on the other hand, in his impeachment of the Parliamentary leaders, charged them with endeavouring

[1] The Petition of Right is given in Gardiner, *Constitutional Documents*, p. 66.

[2] Sec. 129. Gardiner, *Constitutional Documents*, p. 222.

to set up an arbitrary power over "the lives, liberties and estates" of his Majesty's people.[1] And, finally, Cromwell could find no more fitting climax for his indictment of the Rump Parliament, after he had turned it out of doors, than the fear that through its inefficiency the "lives, liberties and comforts" [2] of God's people would be delivered into the hands of their enemies.[3]

The legal and constitutional aspect, then, of the Puritan Revolution in its progress up to the establishment of the Commonwealth, shows us the triumph of limited, as contrasted with absolute, monarchy and the pretty clear definition of those individual rights which were to become known as "natural rights."

All this was achieved, however, through the application and expansion of that Common law of England whose glory had been proclaimed by Fortescue and Coke, but whose virtue had no significance beyond the boundary of England. For the development of the theories which accompanied, and in some measure determined, the affairs of the Commonwealth and Protectorate we must turn to the ecclesiastical aspects of the upheaval.

2. *Ecclesiastical Doctrine of the Parliament Party*

It is a familiar fact of history that the end of Charles I's absolute government was the direct consequence of his attempt, in 1637, to enforce a new

[1] Gardiner, *op. cit.*, p. 236.

[2] Cromwell's "comforts" is at least equal to Jefferson's "pursuit of happiness," as a synonym for "property."

[3] Gardiner, *op. cit.*, p. 401.

liturgy in Scotland. The resistance of the Scots not only revolutionized the church in Scotland, but so embarrassed the king in England that he was obliged to summon the Parliament that eventually dethroned him. Ecclesiastically the overturn in Scotland consisted in the abolition of the Episcopacy and the establishment of a Presbyterian form of church government on the lines which Knox had derived from Calvin. This signified the ultimate triumph of the anti-prelatical ideas and tendencies which James I had succeeded in resisting in both Scotland and England.[1] How closely these ideas and tendencies were related to the anti-monarchic political doctrines of the sixteenth century, has been made evident in the account of the Calvinistic monarchomachs. The relationship appeared now in the procedure by which the Scottish nation organized itself against the king — the famous Covenant of 1638.[2] With a conscious and obvious reference to the covenants of the Old Testament by which the Chosen People had confirmed their allegiance to Jehovah and to their king, the Scots pledged themselves to maintain the worship of God as ordered in their kirk and to sustain and reverence their king so long as he conformed to the laws of the kirk and of Parliament.[3] In both form and fact, thus, the Scottish people exemplified the theories which had been developed by Languet and Buchanan.

The effect of the Scottish example on the ecclesias-

[1] *Supra*, pp. 214 *et seq.*

[2] Text in Gardiner, *Constitutional Documents*, p. 124.

[3] This is the substance of an enormously verbose document.

tical situation in England was very important. Opposition to Episcopacy on merely ecclesiastical grounds had been much less keen in the southern than in the northern kingdom. But the arbitrary methods by which Archbishop Laud had enforced conformity upon the not unimportant Puritan element in England, and the extreme ground taken by certain high prelates for the divine right of bishops as well as of kings, involved Episcopacy in the destruction which the Long Parliament meted out to all the supports of the royal policy. The time had now come for England to decide finally the questions of church government which had been already solved, though with much effort, by the Continental nations that had revolted from Rome.[1] Henry VIII's peculiar method of severing relations with the Papacy had prevented these questions from coming to a definitive issue before. But after the downfall of Laud all the diverse opinions as to church organization and the relation of state and church that had closely followed the Lutheran movement on the Continent came to the front in England.[2] Parliament was somewhat easily moved to destroy prelacy, so far as it involved political functions. The bishops and other church officials were deprived of all right to sit in Parliament or to exercise any sort of political or judicial authority.[3] This settled one phase of the matter. But

[1] *Supra*, pp. 3 *et seq.*

[2] For the sects that appeared in England, see Masson, *Life of Milton*, III, 136 *et seq.*

[3] Act of 16 Car. I, c. 27. Gardiner, *Constitutional Documents*, p. 241.

whether bishops should be retained for purely ecclesiastical functions, was another question. The answer was given when Parliament voted that the Presbyterian system of organization and government should be introduced into the Church of England.[1]

Two causes chiefly had contributed to this result, and each had a distinct importance in the general development of political theory. The first cause was the enormous influence acquired by the Scottish politicians and divines through the necessity of Scottish aid in Parliament's war with the king. The alliance of England and Scotland against their common king had been effected by the Solemn League and Covenant[2] in 1643. This instrument expressed in both its form and its substance the political ideas that had been characteristic of militant Calvinism. Its form was not that of an ordinary treaty between governments, but that of a mutual agreement, signed and sworn to by each individual for himself, undertaken by the "noblemen, barons, knights, gentlemen, citizens, burgesses, ministers of the Gospel, and commons of all sorts in the kingdoms of England, Scotland and Ireland." It reproduced, thus, the character of the Scottish National Covenant of 1638, and carried fully over into England the conceptions of national popular sovereignty that were implied in that instrument and its application. The signing of the League and Covenant became a test in England

[1] Masson, III, 173–175.

[2] Text in Gardiner, *Constitutional Documents*, p. 267. For the circumstances of its adoption see Gardiner, *The Great Civil War*, I, 268 *et seq.*; Masson, *Life of Milton*, III, 6 *et seq.*

of a man's adhesion to the cause of Parliament against the king. Under such circumstances the anti-monarchic trend of the movement was comprehensible to the dullest, while the appeal to each individual, rather than to representative bodies, whether municipal, provincial or national, could not but suggest a conception of "people" and of the contractual basis of government that was very different from what the Continental monarchomachs had set forth. In its substance, however, the League and Covenant aimed to counteract any baneful tendencies toward democracy by setting first among the ends to be attained the reformation of church and religion so as to conform to the Scottish system. It called for the extirpation not only of Popery and prelacy,[1] but also of "superstition, heresy, schism, profaneness" and everything contrary to sound doctrine and to godliness. This was well understood to signify that the rule of conformity was to be as rigorous under Presbyterian as it had been under Episcopal organization, and that Parliament was to enforce the moral and religious discipline prescribed by ministers and elders as strictly as Charles I had enforced the prescriptions of Archbishop Laud and his coadjutors. Not unregulated democracy, but the Calvinistic aristocracy, was to prevail in the reformed system which was to be introduced by the League and Covenant.

The second cause that efficiently contributed to

[1] Prelacy was defined as meaning "Church government by Archbishops, Bishops, their Chancellors and Commissaries, Deans, Deans and Chapters, Archdeacons and all other ecclesiastical officers depending on that hierarchy." — Art. II.

the establishment of Presbyterianism by Parliament is suggested by what has just been said. In the excitement and confusion of the breach between the Long Parliament and the king all restraint on the multiplication of sects and sectaries had been lost sight of, and England teemed with doctrines, both religious and political, that would be extravagant at any time, and that to conservative contemporaries seemed to threaten social anarchy. The hope of setting some bound to the radicalism that unrestrained private judgment was promoting, won to the support of the new establishment many who had little liking for Scottish Presbyterianism in its ecclesiastical or its moral aspects. The sequel proved, however, that such hope was fallacious. In effective opposition to the established church stood that body of sectaries who, whatever their divergences on other points, agreed in contending that their creed and worship should not be a subject for regulation by the government. Under the name of Independents they won the support of the military dictator whom the development of the revolution produced, and their ideas prevailed in the Cromwellian régime of the Commonwealth and Protectorate. The importance of the Independents in the history of political theory is very great. They included thinkers whose names stand high in the list of influential contributors to the modern philosophy of government. Moreover the theories incidental to the Independent movement added two items to that series of "natural rights" which played so large a part in the thought of the

eighteenth and nineteenth centuries. The jurists of the Common law were, as we have seen, largely responsible for the formula which ascribed first to Englishmen and then to all men the inalienable rights of life, liberty and property. In much the same sense the Independents of the Puritan Revolution are responsible for the rights of freedom of worship and freedom of expression.

3. *The Development of Independency*

From the theological and ecclesiastical point of view the Independents were the radicals of the Reformation in England. They represented that same extension of the principle of private judgment in interpreting the Scriptures that had given so much trouble to the Continental Reformers. To a national church they manifested the same repulsion as to the universal church under Rome, and they rejected every prescription of creed or ritual or discipline save what the individual Christian took upon himself. That such an attitude was incompatible with any conception of a church that had prevailed in thirteen centuries, goes without saying; and that the political implications of it were radically democratic, was entirely clear to contemporaries. It is not strange that the earliest holders and exponents of these doctrines suffered as much persecution as they did; that they did not suffer more was due to the fact that they were in the main orderly and law-abiding people in all that concerned non-ecclesiastical relations.

The first manifestation of Independency in Eng-

land was the teaching of Browne and Barrow in the reign of Elizabeth and the propagation in small and obscure congregations of Brownist ideas, as they were called. In substance these ideas were that any self-constituted group of Christians was entitled to manage its discipline and worship according to its own view of the law of God, and that the officers of secular government had no authority to enforce submission to any particular ecclesiastical system. Brownism implied, thus, the purest individualistic democracy in church institution and government,[1] and toleration as the principle of the state's relation toward religious worship. Practically, however, the aim of the Brownists was not general toleration, but escape from the harrying to which they, like the rest of the Puritans, were subjected by the Episcopal authorities. Under James I and Charles I the steady increase in the number of the Puritans and the corresponding increase of rigour on the part of the bishops in their efforts to maintain conformity produced that Separatist movement of which the most famous result was the settlement of New England.

In America all the conditions, ecclesiastical, social and political, were favourable for the full unfolding of the theories implicit in the Independent doctrine. The colonists were securely beyond the range of restraint by the bishops; the inhospitable character of

[1] Browne defined a church as "a company or number of Christians or believers, which, by a willing covenant made with their God, are under the government of God and Christ and keep his laws in one holy communion." Prothero, *Statutes and Documents*, 224. See Osgood, in *Political Science Quarterly*, VI, 13–15. An excellent sketch of the history of Independency may be found in Masson, II, 534 *et seq.*

the land and of its aboriginal inhabitants rendered inevitable a high degree of social cohesion and economic equality; and the remoteness and preoccupation of the royal government prevented any effective control from England over the political institutions that developed. There resulted that aggregate of communities, democratic in institution and independent in both ecclesiastical and secular organization, which constituted colonial New England. Here Independency was first realized on a significant scale. The self-constituted congregation of worshippers was the primary aspect of each community, and the political organization was effected in conscious or unconscious imitation of the ecclesiastical. Covenant or compact — the express consent of each individual to the formation or perpetuation of the community — was universally accepted as the basis of a community, whether religious or political, and the early history of New England abounds in applications of this idea in concrete cases.[1] The Mayflower Compact, the Fundamental Orders of Connecticut and the Newport Declaration[2] expressed without disguise or reservation the democratic principles that were only latent in the Scottish National Covenant of 1638. The whole tendency of conditions in America, indeed, was to set in full view everything involved in Independency, whether theoretical or practical. The consequence was that when, after the assembling of the Long Parliament, the ecclesiastical revolution began, New

[1] See Merriam, *History of American Political Theories*, pp. 17 *et seq.*
[2] Especially this last one, cited by Merriam from R. I. Records, I, 112.

England contributed materially to the theories which triumphed in the Cromwellian régime.[1]

Probably the most important of these contributions, so far as political bearings were involved, was the formal theory of toleration which was set forth by Roger Williams. The Puritans of Massachusetts had adopted a system which, in the adjustment of relations between secular and ecclesiastical authority, had much of the theocratic character of Calvin's régime in Geneva. Williams had been banished from the colony for refusing to conform to the standard of belief and practice set by the ministers, and his *Bloudy Tenent of Persecution*, though written in England, 1644, with immediate reference to current controversies there, derived its inspiration and its form from his American experience.[2] It was a radical plea for freedom of conscience, shrinking from none of those extreme logical implications of the doctrine that staggered less resolute advocates.[3] To Williams a church was merely a group of individuals united for a purpose which was of no more concern to the civil magistrates than the purpose of any other group, such as a trading company or a medical society. What belief was professed or what form of worship was exercised, was a question beyond the competence of the govern-

[1] For the reflex action of New England on old England, see Osgood, in *Political Science Quarterly*, VI, 216 *et seq.*

[2] The work, edited by E. B. Underhill, was reprinted by the Hanserd Knollys Society, London, 1848. For the circumstances of its publication see Underhill's Introduction. Also, Osgood and Merriam, *op. cit.*, and Masson, III, 113 *et seq.*

[3] For the various shades of belief in toleration at this time see Masson, III, 122 *et seq.*

mental authorities, so long as the laws for the maintenance of peace and order were not infringed. Jews, Turks and even Papists ("upon good assurance given of civil obedience to the civil state") must be left alone by the secular power. The duty of the civil magistrate was summed up by Williams thus: To the religion which his conscience tells him is the true one—approbation, personal submission and protection; to one which he believes false—permission and protection.[1] Thus the promotion of the true faith, which had for twelve centuries stood first among the recognized functions of government, was dropped out of the category. Roger Williams, a Puritan of the Puritans, here joins hands with the wholly un-Puritan Machiavelli in an appeal to the principle of pagan Rome.

But the spirit in which Williams defends his thesis is anything but Machiavellian. Texts from Scripture, with interpretations as far-fetched and fanciful as any produced by the mediæval scholastics, are the main feature of his argument.[2] Only secondary to this is the argument *ab inconvenientia*—the exposition of the inconsistencies and inhumanity that attend the supervision of religious belief by the secular government.[3] Toleration is the true principle, first because God enjoins it, and only second because

[1] *The Bloudy Tenent*, chap. cxxv.

[2] To derive toleration from the history of the Israelites in Canaan was naturally a serious task. For the matter of Elijah and the prophets of Baal, see the *Bloudy Tenent*, chap. lxxvi.

[3] He frequently recurs to the thought that without toleration in practice the greater part of the race would have been destroyed for idolatry and non-conformity.—*Cf.* chaps. xcvii, ci, cxiii.

it is politically and socially expedient. Yet the fact that the argument from expediency is used at all is significant. Taken in connection with the democratic dogma which Williams propounds — that civil government is based on the consent of the people, expressed in an original compact — it indicates a tendency toward those more extreme and purely rationalistic methods of thought which were characteristic of the Levellers. The *Bloudy Tenent*, in other words, expresses essentially the resolution of a body of religious sectaries, the Independents, not to be dominated by another such body, the Presbyterians; while the fuller implications of the theory which the work embodied were revealed in the political revolution which was effected in 1647–1648 by the army.

4. *Political Theory of the Commonwealth*

It was the steadfast refusal of the Presbyterian majority in Parliament to adopt the principle of a broad toleration, that led to the overthrow of both Parliament and monarchy. The army, both officers and rank and file, was strongly Independent in feeling. After crushing out the last vestiges of royalist military opposition in England the soldiers in their cantonments came much under the influence of the most radical of the sectaries — those generally known later as Levellers. In 1647 Parliament voted the disbandment of the army, but the order was disobeyed. The soldiers, urging certain grievances in respect to their pay, took things into their own hands, drove away the officers whom they disliked, and organized

a council, consisting of representatives elected by each regiment, to direct action for the common interest. To this council were ultimately added those general officers who espoused the cause of the army, including Cromwell and Ireton, while the elected representatives of each regiment were made to comprise two commissioned officers and two privates.[1] The army, thus organized, became after the middle of 1647 the controlling factor in the political as well as the military affairs of England. It took the captive King Charles into its custody; overawed Parliament and, by purging that body of Presbyterians, reduced it to a Rump; suppressed the renewed royalist uprising in the second Civil War; and finally brought the king to the scaffold and abolished the monarchy. In the stress of renewed war the democratic elements in the constitution of the army gave way to the normal forms required by military discipline;[2] and ultimately the prestige of the victorious commander produced the monarchic Protectorate. To the end of the Cromwellian régime, however, there persisted the influence of certain radical ideas which found their first clear formulation in the controversies of the period when the army was taking the affairs of the realm into its own hands.

For our purpose these controversies may be regarded as concerned, first, with the source, content and possessors of the rights which all the anti-royalist

[1] Gardiner, *Civil War*, III, 101.

[2] The elected representatives of the rank and file ceased to participate in the conduct of the army's policy in January, 1648. Firth, Preface to *The Clarke Papers*, p. lviii.

factions held to belong to "the people"; and second, with the constitutional and governmental arrangements through which these rights were to be made effective.

As to the source of these rights, we have in the doctrines preached by the Levellers, or extremest Independents, a pretty complete transfer of the debate from the law of England, upon which the earliest exponents of the Parliamentary cause had depended, to the law of nature, and a perceptible tendency to emphasize reason rather than Revelation in the development of the argument. As Edwards says of the sectaries in his *Gangræna:* "Though the lawes and customes of a kingdom be never so plain and cleer against their wayes, yet they will not submit, but cry out for naturall rights derived from Adam and right reason."[1] The body of natural rights thus insisted upon was held to embrace specifically those of life, liberty and property, freedom of conscience and expression, and equality in political privilege. Equality, indeed, was the mainstay of the extremists' doctrine, and was the basis of their argument for manhood suffrage. The right to vote for representatives was held to be an immediate corollary of the principle that every man was by nature free and could be subjected to government only by his own consent; for government must be by law and law must be the will of each individual, expressed either in person or through a representative. This radical democratic conception was associated to some extent with the further idea

[1] Quoted by Firth, Preface to *The Clarke Papers*, p. lx.

that equality in property as well as in the franchise was the natural right of every man; and it was apparently this feature of the Levellers' programme that was most influential in causing Ireton and Cromwell to oppose them and thwart their projects in the council of the army.[1] But whatever the precise content of natural rights, the possession of such rights was an attribute, the extremists clearly maintained, not of the people considered collectively or as organized in traditionary corporations or parliaments, but of the people considered individually. In the multitudinous manifestoes[2] of the Levellers this individualization of natural rights is constantly discernible, and the thought of these men marks a conspicuous stage in the transition from the ancient notion of rights of the people to the modern notion of the rights of man. There had been something of individualism in the Scottish Covenant and similar papers, but as compared with that of the Levellers it was mechanical rather than conscious.

The constitutional and governmental arrangements through which the army proposed to make its doctrines effective are to be seen in the various documents in which the programme of the Independents

[1] For Ireton's strenuous opposition to manhood suffrage, on the ground that it endangered property, see *Clarke Papers*, I, 299 *et seq.* Rainborow makes the best presentation of the Levellers' case in this debate; esp. pp. 303 *et seq.*

[2] The most prolific source of these was Lieutenant Colonel John Lilburne, for whose career see Gooch, *Democratic Ideas*, 141, 200. There is a volume containing thirteen of Lilburne's pamphlets in the library of Columbia University. Most of the catchwords of modern democracy are to be found in his writings; *e.g.* "We the people," in his *Vox Plebis*.

was embodied. Most important of these was that called "The Agreement of the People," framed by the council of the army in 1647, as the basis for an adjustment with the king and Parliament, and published, in a much modified form, at the time of the execution of Charles in January, 1649.[1] This paper itself, and the debates in which it took its shape, throw most important light on the currents of political theory in the army.[2] We are enabled to see the first complete manifestation of the principles and procedure which later became familiar in the form of constitutional conventions and written constitutions. The "Agreement of the People" was in fact a draft constitution for the Commonwealth — a draft, however, which was prevented by circumstances from ever going into effect.[3]

The most significant of its features, from our point of view, were the following: It declared itself to be an expression of the will of the people, and made the meaning of this declaration entirely clear by providing that every individual who was included in "the people" should sign the document. Its leading purpose was to provide a clear and unmistakable mode of organization and action for the Parliament, as

[1] Both drafts are in Gardiner, *Constitutional Documents*, pp. 333, 359.

[2] The debates are pretty fully reported in *The Clarke Papers*; Preface, pp. xlviii *et seq.*, with the text as therein indicated, and Vol. II, Preface, pp. xv *et seq.*, with the text. Also, Gardiner, *Civil War*, III, 210 *et seq.* (chap. lv).

[3] Many of its provisions for the actual organization of government were enacted by the Rump and appeared also in the Instrument of Government.

representatives of the people — which purpose was effected through the scheme of a single body, to be elected biennially by constituencies substantially equal in population, and to be intrusted with the supreme powers of government. That the authority of this body was delegated, however, and not original, was distinctly declared through the express reservation of certain matters from its competency. Among these things reserved were final judgment "concerning things spiritual or evangelical," the conferring of privileges, bills of attainder (save in case of officers abusing their trust), and the security of private property. These reservations constituted what later came to be known as a bill of rights in behalf of the individual as against the government. The guarantee of these rights, furthermore, was unmistakably insured by the inclusion of them in a list of the provisions "fundamental to our common right, liberty and safety," and the declaration that it should not be treason to resist the representative body if it should "render up or give or take away" these fundamentals.[1] That is to say, the right of resistance against the government was expressly ascribed to the people.

This famous document is the nearest approach ever made in England to the recognition of an authority capable of self-expression higher than the ordinary legislature. If the Agreement had been put into operation as contemplated by its framers, it would have stood as the expressed will, not of Parlia-

[1] Draft published in January, 1649, sec. 10.

ment, but of the people considered as individuals. It would have realized far more completely than the Scottish Covenant the ordaining of government and law through consent and compact. Yet the source of this extreme democratic principle in the Agreement was not abstract philosophy, but the distrust felt by Ireton and the other army leaders toward the Presbyterian Parliament;[1] and the failure of the paper to go into effect was due to the fact that, when Parliament had been purged of Presbyterians, these same leaders felt that it was safer to carry through their revolution under cover of the sacred name of Parliament than to display the catastrophe without disguise. How utterly disgusted with this policy were the real democrats of the day — the Levellers, may be seen in the furious assaults of Lilburne[2] and others upon the Rump and all its works. In these sectaries was the true logic of the system which the Agreement embodied. But this logic meant ultimately universal suffrage and doctrines as to property that Cromwell and Ireton could never accept; hence the Rump, without resort to the people in general, was used as the instrument of the revolution. Later this fear of radicalism, on the one hand, with the probability, on the other, that a free election for Parliament would go against Independency, if not against the whole Commonwealth idea, was the underlying cause of the transformation into the Protectorate.

[1] *Cf.* Gardiner, *Civil War*, III, 118.
[2] See his *Fundamental Liberties of England.*

The military government administered by Cromwell as Lord Protector expressed no theory of politics. It was felt by contemporaries to be merely a transitory condition. No philosophy save the recognition of compelling necessity was produced to justify it. The political speculation of the period turned wholly upon the questions as to whether commonwealth or monarchy should become the permanent system, and in what particular form the one or the other should be organized. In the debates on these questions the theories and the theorists of the Commonwealth period retained the chief place.

5. *The Political Ideas of Milton*

In the writings of the extremists like Lilburne the basic principles of the Puritan Revolution are abundantly illustrated, and the blending of ideas derived from English law with those obtained from the Scriptures and from the theories about the law of nature, is thoroughly effected. But the form and manner of the Levellers' philosophy were so lax and incoherent that little effect of it was manifest save in the surgings to and fro of popular interest in England itself. Far different was the case with the works in which the cause of the Commonwealth was sustained and defended by John Milton. Not only in England, but also, especially after his crushing reply to Salmasius, all over the Continent,[1] the learning, logical power and literary form of his writings wrought powerfully for the promotion of the principles which he espoused.

[1] Masson, Milton, IV, 316 *et seq.*

Not so much because of novelty in essence as because of philosophic breadth and force in formulation and permanence in influence, his theories must be briefly examined.

As to the origin and end of government, Milton's doctrine[1] is that of the sixteenth-century monarchomachs, so presented, however, as to emphasize the rationalistic rather than the Scriptural supports of the theory. "All men naturally were born free," and were endowed with the right and power of self-defence and preservation. To avoid the discord and violence that sprang from Adam's transgression, cities and commonwealths were founded by agreement of men with one another, and kings and magistrates were chosen "as deputies and commissioners to execute . . . that justice which else every man by the bond of nature and of covenant must have executed for himself and for one another." Further, to guard against the perverse tendencies of the persons thus intrusted with authority, laws were devised, "either framed or consented to by all," to limit the action of the governors. Kings and magistrates, thus, are but the agents of the people; they possess no power save what is originally in every man and is delegated to them, and they exercise no power save under the restriction of the laws. Moreover, though the exercise of power is intrusted to kings and magistrates, yet it is in the people that power "remains fundamentally" as a "natural birthright."

[1] His *Tenure of Kings and Magistrates* (1649) contains the most concise formulation of his views on this subject. The same ideas pervade the *Defensio pro Populo Anglicano* (1651).

From these premises Milton draws the obvious and familiar conclusions as to the justice of deposing rulers for violation of right and law. His argument is illustrated by the well-worn instances of deposition and tyrannicide from both sacred and profane history. But the stress that is most characteristic appears in the insistence that the doctrine propounded is the only one that is plainly reasonable and compatible with the dignity of man.[1] The royalist claim that the election of a king expresses really God's choice is neatly turned against its makers: If the people's act in election is the act of God and a just ground for enthroning the monarch, why is not the people's act in rejection equally the act of God and a just ground for deposing?[2] If it is by God that kings reign, it is by God, too, that peoples assert their liberty. It is indeed more godlike for a people to depose a tyrant than for a tyrant to oppress an innocent people.[3] All this is plain to natural reason, and merely receives additional confirmation by the Scriptures.

That ultimate political power is in the people, is the most fundamental principle, then, of Milton's philosophy. He stands for popular sovereignty, what-

[1] To think that the people were created for the king rather than he for them, and that they collectively are inferior to him singly, "were a kind of treason against the dignity of mankind." — *Tenure of Kings and Magistrates.*

[2] *Ibid.*, in Morley's ed., p. 364.

[3] Tyrannum sane tollere quam constituere divinius est; plusque Dei cernitur in populo quoties iniustum abdicat regem, quam in rege qui innocentem opprimit populum. — *Defensio Prima*, in *Works*, Fletcher's ed., p. 661; also p. 354.

ever the form of government. Liberty, as the "birthright" of men and of nations, is also a concept which he dwells much upon. His doctrines under this head are of particular interest, since they embody in most attractive form the substance of that radical creed which is so incoherent and repulsive in the writings of other extreme republicans of the day. The liberty for which he contends is not alone the absence of monarchic government, but the assurance to the individual of a wide sphere of action unrestricted by any government. Milton is the earliest great prophet of that individualism which came to be almost a philosophic fetich in the nineteenth century. It is, however, the foundation and not the content of his doctrine that suggests the recent system of *laissez faire;* for, extreme as he was by the standards of his time, the sphere which he would exempt from governmental interference is very limited as compared with later ideas.

The basis of his demand that the individual be let alone is the dignity that belongs to a being endowed with reason. "Reason," he says, "is but choosing;"[1] and where opportunity to choose is denied by the prescription of government, manhood itself is stunted and destroyed. Opportunity for each man to work out his own good is what government must aim to secure. Laws must merely punish crime; the absence of laws will do most for the positive promotion of virtue.[2] The real progress

[1] *Areopagitica* (Morley), p. 329.

[2] See his *Defensio Secunda*, with the translated extracts and analysis in Masson, IV, 580 *et seq.*, esp. 611–612.

of the race requires also that men rise superior to custom and prescription, whose tyranny is as depressing as that of positive law. Reason, cultivated and informed by all attainable means, shall be the sufficient instrument of all social and political good, and the warrant of liberty.

As to the details of this rational liberty which Milton demands, they include, first, religious toleration.[1] On this head the plea of Milton is that of Roger Williams, with the emphasis, however, on the argument from utility rather than on the injunctions or teachings of the Scriptures. Government is to keep its hands off entirely from the regulation of intercourse and communion between man and God. In the second place, he demands the unrestricted freedom of the press. The immortal *Areopagitica* (1644) embodies his indignant rebuke of a censorship and his eloquent plea that, unless human reason is a delusion and a snare, truth will always prevail, in a fair field, over error. His principle carries him, moreover, far beyond the mere question of the press. To the whole system of governmental supervision and restriction which he finds sustained by Plato and his school, Milton opposes the demand for a rational freedom. With an obvious allusion to the Calvinistic régime so dear to the Scottish and English Presbyterians, he denounces as destructive of the very foundations of virtue the attempt to enforce a rigid and austere code in diet, dress and amusements. He protests against uniformity in conduct, thought and ex-

[1] See especially his *Treatise of Civil Power in Ecclesiastical Causes.*

pression as not only unattainable, but wholly undesirable, and on the basis of a rational and but slightly regulated diversity he rears a magnificent ideal of both individual and national progress and prosperity.

Liberty, then, was the first and controlling preoccupation of Milton in his political philosophy. As to the form of government through which this liberty should be guaranteed, he was of course primarily a republican. Yet, maintaining that ultimate power was in any case in the people, he was not precluded from supporting any form of organization that might be most expedient for exercising such authority as was delegated by the people. When Cromwell overthrew the Commonwealth and became king in all but name, Milton was willing and even eager to support the new order, on the ground of its greater efficiency in maintaining true liberty as he conceived it.[1]

A severe test of Milton's philosophy came when, after Cromwell had failed to achieve a permanent reorganization of the state, the question of the succession arose. Against the tide that was obviously running with irresistible force toward the restoration of the Stuarts, Milton stood stiffly by his original republicanism. He demanded[2] "a Free Commonwealth, without Single Person or House of Lords," and advocated a government consisting of a body of representatives, holding by permanent tenure,[3] and

[1] See his tribute to Cromwell and the other leaders in the *Defensio Secunda;* also Masson, IV, 611 *et seq.*

[2] In his *Ready and Easy Way to Establish a Free Commonwealth,* published in 1660. In Morley's ed., p. 423.

[3] This is the tenure he prefers, though he would admit the retire-

choosing from among themselves an executive council. His preference for so oligarchic a type of government seems somewhat strange. It is to be explained, however, partly by the fact that his pamphlet was a last desperate protest against a policy which he knew was sustained by a great majority of the people of England, and partly also by the sentiment of aristocracy which underlay all of Milton's philosophy. He had never favoured universal suffrage and rule of the numerical majority. Liberty for all, but authority for such as were capable, was his creed. Like the mightiest intellects of all time, he viewed things from the standpoint of "that hapless race of men whose misfortune it is to have understanding."[1] Hence he denied flatly, in the *Free Commonwealth*, that a majority which did not value liberty should prevail over a minority which demanded it. "They who seek nothing but their own just liberty have always right to win it and keep it whenever they have power, be the voices never so numerous that oppose it."[2]

With this, — the revolutionist's familiar plea, — Milton disappeared from the field of formal political philosophy, and narrowly escaped disappearing from earth altogether.[3]

ment of one-third of the members annually. For the differences between the two editions of this work of Milton's, and its relation to contemporary politics, see Masson, V, 677.

[1] *Areopagitica* (Morley), p. 334.

[2] *Cf.* Buchanan's doctrine, *ante*, p. 60. Milton often refers to Buchanan, and clearly was much influenced by him.

[3] His name was among those proposed for exclusion from amnesty at the Restoration, but was omitted — no one knows precisely why — from the bill as passed.

6. *The Theories of Harrington*

Less radical and more systematic in his philosophy than Milton, but at the same time republican in his leaning, was James Harrington, whose ideas attracted much attention amid the host of propositions which were submitted to the public during the transition from Protectorate to restored royalty.[1] Harrington's standpoint was that of the impartial scientific observer of the situation in England, with no strong personal bias as between the factions.[2] His method in political science was chiefly that of history and observation, and in contrast to the *a priori* reasoning of most of the Commonwealth party, he consistently followed in the path of Machiavelli and Aristotle. For these two philosophers he manifested the greatest admiration,[3] though he was by no means servile in adopting their conclusions.

The substance of Harrington's philosophy is embodied in the preliminary chapter of his chief work, *The Commonwealth of Oceana*.[4] This work as a whole embodies a scheme for a constitution of Great Britain, to be instituted by Cromwell. The literary apparatus of a Utopia is employed in presenting the

[1] Masson, *Milton*, V, 481 *et seq*.

[2] He was on intimate terms personally with Charles I, during his captivity.

[3] Machiavelli is designated as "the only politician of later ages." That Bodin receives no recognition is due to the Frenchman's strong monarchic leanings. Hobbes is the object of many severe attacks by Harrington, on the score of both method and conclusions.

[4] Published first in 1656. I have used the handy edition of Henry Morley, London, 1887. Also in Harrington's *Works* (1771).

project, but the fanciful nomenclature and imaginary procedure do not seriously obscure the real substance of the matter. The general principles of politics, with which the constitutional project is prefaced, Harrington bases first upon the idea that government must be either "the empire of laws and not of men" or "the empire of men and not of laws." These two conceptions he regards as characteristic respectively of ancient and of modern philosophy, represented typically by Aristotle and Hobbes. The distinction between the two conceptions of government lies ultimately in the fact that in one the general public interest, and in the other some particular private interest, is assumed to be the end of the state. Adopting the idea of the ancients as the sound one, Harrington proceeds to investigate the principles which must underlie a government aiming at the common welfare. Here again the consideration is twofold — first as to the material conditions, and second as to the psychological influences, which are involved in the working of political institutions. Furthermore, governments are distinguished into two classes according as they are domestic, or national, and foreign, or provincial. That is to say, the principles applicable to the self-government of a nation are not the same as those which apply to the government of one people by another. And finally, stability or permanence is assumed to be the criterion of what is desirable in government, — an assumption which is held to be abundantly justified, not only by the doctrines of Aristotle and the other ancients, but also by

the conditions in England amid which Harrington writes.

For national governments, then, the prerequisite of stability is, according to Harrington, that supreme authority should rest with those who own most of the property in the community. In general this will mean that the government must be in the hands of the land-owning class, save in commercial city-states where other forms of wealth are so much more important than land. This economic basis of government is demonstrated with great skill and ingenuity on both logical and historical grounds. Absolute monarchy is shown to be "natural" only where the land is all or mostly in the hands of a single person; "mixed," or limited, monarchy, where it is in the hands of a few; and commonwealth, where it is widely distributed among the people. The maintenance of government in the hands of one, few, or many by violence, regardless of the relation to property, is the essence of tyranny, oligarchy and anarchy respectively.[1]

For provincial government the "balance of dominion," as Harrington calls this relation between authority and property, has no significance. The stability of control over a foreign people, or province, depends exclusively upon some inherent advantage possessed by the ruling power — whether in numbers, wealth, position or otherwise. Any application of the principle of the balance of dominion would at

[1] Harrington's interpretation of English history turns upon his view that the breaking up of the great estates of the nobility and the monasteries by the first Tudors so distributed the land as to make either monarchy or aristocracy impossible thereafter.

once convert the provincial into a national system and would destroy the existing order.[1]

Turning to the psychological influences which, together with the economic principle already adduced, determine the constitution of government, Harrington premises that the commonwealth corresponds most closely to the rational nature of man, since it affords play to the interests of all. But how to adjust the interests of all, conflicting as they do, is the supreme problem of political reasoning. Harrington's solution is ingenious and striking. Common observation, he argues, reveals the principles of governmental organization. Given any group of men debating a matter of common concern, — and a commonwealth is merely such a group, — two parts are at once discernible: one smaller body, say one-third of the whole number, who propound ideas, and a larger body, including the other two-thirds, whose participation consists in passing judgment upon the proposals. Here is the clue to the structure of the government. There must be, first, a senate, embracing "that natural aristocracy diffused by God throughout the whole body of mankind," whose function shall be to originate policies and laws; second, a council, consisting of the mass of the people or their representatives, with the function of passing upon the propositions of the senate; and third, a magistracy, to carry into effect the resolutions adopted by the assemblies. In these three organs is the essential

[1] Except in absolute monarchy, where the ruler is the supreme land-owner in both the national territory and the provinces.

structure of a commonwealth government; and Harrington appeals with confidence in support of his contention not only to Machiavelli and the ancient philosophers, but also to the actual experience of popular states in all periods of history.

For the assured permanence of a commonwealth that conforms in its foundation and structure to the economic and rational principles that he has laid down, Harrington declares two institutions to be indispensable, an "equal Agrarian" and "equal Rotation." By the former he means an immutable law preventing the concentration of landed property in the hands of one or few;[1] by the latter, such a law of elections for the magistracies that all qualified persons shall have an equal opportunity to serve their fellow-citizens. In connection with this latter topic Harrington expatiates upon the peculiar importance of the secret ballot, which he conceives to be of the very essence of just popular government. The devices through which he seeks to insure absolute freedom of the voter from all constraint upon his choice are not the least striking of the ideas which bring Harrington in very close touch with the politics of the nineteenth century. The source of these ideas, however, is his study of the commonwealths of classical antiquity, as is proclaimed by both implication and express avowal at every stage in his philosophy.[2]

[1] For Great Britain he proposes that the limit of individual ownership of land should be set at that amount which produces a revenue of £2000 *per annum*. *Oceana* (Morley), p. 104.

[2] Venice also strongly impressed Harrington with the excellence of its constitution and was frequently referred to by him. He regarded

Harrington's system of doctrine is in many respects a perfect complement to that of Milton, so that the two combined constitute a complete body of republican theory. Milton's preoccupation is primarily with the individual man and the freedom that belongs to him by nature; Harrington is concerned more with the government and the determination of its scope and operation by political art. To Milton monarchic government among enlightened people appears morally inconceivable; to Harrington it is economically impossible. The one thinker is at his best in the destruction of oppressive government; the other, in the construction of beneficent government. Both, though maintaining popular sovereignty, are essentially aristocratic in their philosophy. Milton seeks primarily to shape government so that the intellectually and spiritually preëminent shall be let alone; Harrington, more optimistic, believes that the natural aristocracy will inevitably rule, and models his government so as to facilitate this result. Both thinkers have greatly influenced the politics of later generations. In this respect, however, the relative importance of the two men has not been in reality what it has appeared to be. For Milton, justly glorified as one of the great creative literary geniuses of all time, has been widely read and studied; while Harrington, hampered by the unalluring reputation of a visionary and faddist, has been preserved from oblivion only by the appreciation of a small

it as the best example of what he called the "equal commonwealth," namely, that in which dissension between social classes is best guarded against.

circle of readers. Yet to the few who have got to the essence of Harrington's thought it has been very rich in practical suggestions; and so it happens that the actual institutions in which the commonwealth idea has been realized in England and America present a remarkably large aggregate of resemblances to the establishments of *Occana*.[1]

7. *Anti-Republican Doctrine: Filmer*

Having now reviewed the most conspicuous theories that prevailed among the adversaries of the old order in England, it remains to notice the ideas which were defended by the royalist philosophers and which enjoyed a period of apparent triumph in the Restoration. The bulk of the arguments by which the cause of the king was sustained need not be particularly examined; for they merely repeated in substance what had been formulated by James I in his *True Law of Free Monarchies*.[2] Unassailable and sanctified supremacy through God's immediate ordering was attributed to the hereditary monarch, especially by the dignitaries of the Anglican establishment, and passive obedience was declared to be the whole duty of

[1] Many illustrations on this point may be found in an article by Professor Theodore Dwight in *Political Science Quarterly*, II, 1. But the article must be taken with considerable allowance; for in his enthusiasm for Harrington the writer has attributed to him the origination of a number of ideas which he was by no means the first to propound; *e.g.* that government rests on the consent of the governed, and that a government should be limited by a written constitution. That Harrington's theories played a part in the early political development of the United States may be inferred from the frequent references made to them by leading American statesmen, notably John Adams and Daniel Webster.

[2] *Supra*, p. 215.

subjects.[1] The supports for these positions were chiefly the familiar texts from the Bible and such interpretations of classic history and literature as the erudition and ingenuity of scholars like Salmasius[2] could devise. Royalists of a juristic bent stood firmly, of course, on the constitutional doctrine of the king's prerogative, and made their principal appeal to the law of England. But against the doctrines of the extreme republicans, who went back beyond the English law to the law of nature for the basis of popular sovereignty, it was necessary for the advocates of royalty to present a theory of corresponding character. This necessity was at bottom responsible for the philosophy of two remarkable thinkers, Sir Robert Filmer and Thomas Hobbes.

Filmer has received scant justice from historians of political theory.[3] His best-known work, the *Patriarcha*, is generally thought of merely as the text for destructive criticism by Sydney and Locke. But Filmer's logic is in most respects quite equal to that of his critics, and his clearness of expression suffers not at all in comparison. The *Patriarcha* is weak only so far as it presents a constructive theory; in his assaults on his opponents Filmer manifests a most acute and penetrating mind. Some of his best work on this side is to be found in the writings[4] that

[1] Cf. Prothero, *Statutes and Constitutional Documents*, p. 435.

[2] His *Defensio Regia pro Carolo I* (1649), which evoked Milton's reply, embodied a systematic exposition of the divine-right theory.

[3] A very fair and suggestive appreciation of Filmer is given by Figgis, *The Divine Right of Kings*, pp. 146 *et seq.*

[4] See especially his *Observations concerning the Originall of Government* (1652), dealing with Hobbes, Milton, Grotius and Hunton.

were published before his death in 1653; *Patriarcha* appeared only in 1680, when the controversies that led to the Whig Revolution were beginning.

Filmer's search after a basis for royal power leads him to a very clear conception of sovereignty, as Bodin had conceived it and as Hobbes was shaping the idea contemporaneously with Filmer. The question is: Where in any political body is the final and unquestionable authority to prescribe rules for the conduct of individuals? Or, to carry the question one stage farther in generality: On what universal, or "natural," principle can authority be exercised by any human being over any other? To Filmer the one answer to these questions that is totally destitute of rational or historical validity is that which ascribes authority to "the people," and bases this authority on the natural equality of men. It is the mischievous notion that men are by nature free and equal that has led, he thinks, to the distraction of all philosophy. This doctrine has not only sustained the deadly errors of heathen and papists, but has vitiated the otherwise excellent systems of Hobbes and Grotius.[1] All the clumsy paraphernalia of the social contract could be avoided by the former if he omitted his assumption of original equality, and the latter's contradictions and confusion in dealing with the relation of *ius naturale* to *ius gentium* have no other source than the foolish admission that authority over men and things rests upon human consent.[2]

[1] See *Observations*, on these two writers.

[2] *Ibid.* Filmer's analysis of Grotius is especially acute and effective.

The only logical conclusion from the premise of natural equality is, Filmer holds, helpless anarchy. If every individual must consent to the establishment of government, government is forever impossible. Hence, he says, the advocates of popular sovereignty never succeed in defining who are meant by "the people." Milton's assertion that it means the "better part," or the "sounder part," of the population is followed out mercilessly to its practical absurdity. There is shown to be no basis for majority rule or the rule of representatives when the initial principle is the equality of all. Nor, on that principle, can warrant be found for any political system less comprehensive than that of the whole earth, consented to by every individual — man, woman and child — of every generation of the total population. Any lesser system, established by the initiative or maintained by the power of any limited number of persons, must inevitably involve some act of authority through which the primary principle of perfect equality is squarely contradicted.

In addition to his vigorous attack on the idea of popular sovereignty, Filmer makes an equally strong assault on the idea upheld by the revolutionists that the power of a monarch is inherently more despotic than that of any other depositary of supreme authority.[1] Filmer stands firmly on Bodin's dogma, that an arbitrary and irresponsible power, *legibus soluta*, is the essential characteristic of every government, monarchic or polyarchic. Supreme legislative power is

[1] For this see especially his *Observations*, on Mr. Hunton.

arbitrary, wherever it is located, whether in king or in people. "If it be tyranny for one man to govern arbitrarily, why should it not be far greater tyranny for a multitude of men to govern without being accountable or bound by laws?"[1] And as for the contention that law rather than man should be supreme, and that disregard of law is tyranny, Filmer retorts, cleverly if somewhat sophistically, that on such a principle courts of equity and all exercise of the pardoning power are tyrannic.[2] Here, as elsewhere, he shifts his ground skilfully from general political philosophy to purely English conditions, in order to confound the Parliamentarian jurists who hold to the Common law as the quintessence of all law.

Filmer thus makes a good case for his conviction that the ultimate principle of political authority is *not* that of original equality and a contract for the establishment of government. His doctrine as to what the principle *is*, appeals less strongly to the modern mind. Concisely stated, the doctrine is this: In God's scheme of creation all earthly dominion, or supreme power of controlling persons and things, is of a single kind; there is no distinction between political and economic[3] authority. This dominion as a whole was bestowed by God on Adam at the crea-

[1] *Observations*, on Milton, p. 16.

[2] "There are far more suits for relief against laws than there be for the observation of the laws: there can be no such tyranny in the world as the law, if there were no equity to abate the rigour of it. It is the chief happiness of a kingdom and their chief liberty, not to be governed by the laws only." — *Ibid.*, p. 21.

[3] That is, economic in the Aristotelian sense — pertaining to the household.

tion, and was transmitted intact to Adam's posterity. The patriarchal authority exercised by Adam over his family when that family constituted the whole of the human race is the only species of authority that has the sanction of God's immediate bestowal. It prevailed throughout all the earlier life of the race and was the basis on which the earth was partitioned among the sons of Noah after the Deluge. All early kings were merely fathers of families and possessed exclusive and unlimited power over all persons and property pertaining to the families. In later ages the paternal relation between king and subjects disappeared, but that fact involved no change in the character of the power possessed by the ruler. The unqualified dominion that was exercised by the ancient patriarchs is the type of the "natural" power of kings; it is the only species of authority that has a basis in God's command, in a universal physical fact, that of paternity, and in the authentic history of mankind.[1]

To sustain this theory Filmer was obliged to interpret the history of both Israelites and other races in a way that carries no conviction now, and to repudiate the distinction so incisively made by Aristotle, for whom he showed in general the utmost respect, between political and economic authority.

[1] Filmer concludes from profane as well as from sacred history that all early kings were patriarchs. The "heaps of kings" in limited territory, such as the seventy that went from Greece to the Trojan War, the many that Cæsar found in Gaul, and the four that he found in the English county of Kent, indicate that kingdoms were originally only families. — *Patriarcha*, I, 7.

The patriarchal theory involved also a serious difficulty in connection with the question of the succession; for the hereditary transmission of power by primogeniture was regarded as quite essential to the royal cause. Filmer was obliged to assert that the son "was comprehended sufficiently in the person of the father,"[1] and that "if Adam himself were still living and now ready to die, it is certain that there is one man, and but one in the world, who is next heir, although the knowledge who should be that one man be quite lost."[2] But he nowhere made it very clear why the first son, more than the second or the third, should be the "next heir," considering that all alike are "comprehended" in the father. Yet Filmer's logical hiatus here is no more conspicuous than that of many of his adversaries when, premising the equality of all men, they assign to a majority the right to govern.

That the *Patriarcha* appealed strongly to the men of the seventeenth century seems demonstrated by the elaborate pains taken by Sydney and Locke in refuting it. Locke's first *Treatise of Government*, which is devoted to this purpose, is half as long again as the work refuted. Filmer's theory of the divine right of kings was indeed far better adapted to make an impression when it appeared than such earlier versions of the theory as that of James I.[3]

[1] *Patriarcha*, I, 7.

[2] *Ibid.*, I, 9. Rousseau declines to discuss this theory on the ground that he might prejudice his own interest in case he himself should turn out to be the lost heir. *Contrat Social*, I, ii, end.

[3] *Supra*, p. 215.

For Filmer was in no small degree rationalistic in his argument, discarding the haphazard citation of Biblical texts that had constituted the mainstay of his predecessors.[1] The *Patriarcha* avowedly sought a "natural" basis for royalty, and found it in a principle which was sustained by reasoning about the actual development of human institutions rather than by the blind acceptance of inspired texts. It was doubtless this method of sustaining his thesis that drew especial attention to Filmer. But his method, though new in defence of royalty, had in it nothing of ultimate effectiveness for the seventeenth century. The dogma which for that period was alone "natural" was the freedom and equality of all men. To reject this dogma, as Filmer rejected it, was to put oneself out of the current in which all philosophy was running. That the dogma had hitherto been employed exclusively to sustain the anti-monarchic cause, was no real reason why this should continue to be the case. It was for Hobbes, a royalist of far deeper insight than Filmer, to detect this fact, and boldly and with astonishing skill to adapt the dogma of natural equality and all the paraphernalia of the social contract to the support of monarchic absolutism. But Hobbes bulks so large that it is necessary to examine his philosophy at length and irrespective of its peculiar relation to English history.

[1] Figgis, *Divine Right of Kings*, pp. 146–147.

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CHAPTER VIII

THOMAS HOBBES

1. *Character and Method of his Philosophy*

In taking up the political theories of Hobbes we leave the field of controversial debate on concrete issues that has largely occupied our attention throughout the last chapter and pass to the domain of abstract and systematic philosophy. Not that Hobbes, writing as he did in the midst of the Puritan Revolution, was unaffected in his thought by that convulsion; on the contrary, the support of the royal cause was a definite purpose of his work. But he was by nature a closet philosopher rather than a practical politician, and his system, when completed, was so comprehensive an exposition of general political science that his personal preference for absolute monarchy appeared as merely an insignificant episode.

The general conditions amid which Hobbes produced his great political treatises present a close parallel to those that surrounded Bodin sixty years earlier.[1] Hobbes's *De Cive* appeared in 1647 and the *Leviathan* in 1651. In those years the English Puritans were declaiming against tyranny in the same terms that the Huguenots had used before

[1] *Supra*, pp. 41–42, 81.

them, and were carrying into formal application the doctrines of resistance and tyrannicide; while the literature of the time embodied no less of passion and no more of clear-cut and generally accepted doctrine than prevailed in France at the time of St. Bartholomew's. Hobbes published his political treatises while in exile. The meeting of the Long Parliament had unduly strained his none-too-steady nerves, and he had gone immediately to France, "the first of all that fled," as he himself candidly confesses.[1] In Paris he lived in close relations with the royalist colony and for a time acted as instructor to the future king Charles II. Like Bodin, thus, he was identified with the royalist party in a time of civil dissension; and like Bodin he aimed in his political philosophy to sustain the royal cause primarily through the attainment of exactness in the conceptions of state and sovereignty.[2]

But with environment and purpose the resemblance of Hobbes's philosophy to Bodin's ceases. In method the Englishman departed entirely from his predecessor. Hobbes was in his early life a friend and admirer of Bacon, by whom he was doubtless inspired with interest in the progress of physical science. Later he became profoundly absorbed in the discoveries and discussions in physics and mathematics which centred about the work of Descartes. For any important contributions to these sciences, Hobbes was, despite his unwavering belief to the contrary,

[1] *Works*, Molesworth's ed., IV, 414.

[2] *Cf.* "Introductory Letter to the Duke of Newcastle," in *Works*, Vol. IV.

wholly unfitted;[1] but his study of them determined the form and method of his philosophy in fields where he was destined to preëminence. The basis of all his thought in ethics and politics was materialistic, and for its development no method appealed to him but that of Euclid. Definition and deduction summed up his demonstrative process. Geometry he considered to be the only true science,[2] and only the exactness of its method and conclusions could satisfy his mind. Hence the teachings of history and of authority have no place in his system. He but rarely supports an argument by historical references, and he has only disdain for any one "who takes up conclusions on the trust of authors and doth not fetch them from the first items in every reckoning, which are the significations of names settled by definitions."[3] The *Leviathan*, which for our purpose may be considered the substance of his philosophy, consists essentially of, first, a series of definitions in which all the concepts of science are formulated and distinguished with extraordinary acuteness, and, second, a chain of deduction so close and cogent as to bear the reader helplessly to the writer's conclusions. Hobbes appeals almost exclusively to the intellectual conviction that his reasoning about human nature may produce in those who follow it; he seeks little aid from the

[1] For his persistent contention that he had "squared the circle," and his long dispute over this with Wallis, see Robertson, *Hobbes*.

[2] "Geometry, which is the only science that it hath hitherto pleased God to bestow on mankind." — *Leviathan*, chap. iv.

[3] *Ibid.*, chap. v, *et passim*. Hobbes had great confidence in reflection as contrasted with reading. He said that if he spent as much time as others did in reading, he would be as ignorant as they.

concrete facts of men's experience and none at all from the judgments of other philosophers.

The foundation of his political science is carefully laid in his theory of knowledge and of happiness. Here his materialism is obvious at the outset. All human knowledge is reached, he holds, through the senses, and every idea is the result of an effect produced upon an organ of sense by the motion of an external object. "Body," or matter, and motion are the ultimate phenomena, and mental and moral concepts are derived from them. All human "passions," or emotions, are deducible from the antithesis of appetite and aversion; and these primary species are, according to Hobbes, but the slight beginnings in man of motion to or from an object that stimulates the motion.[1] If the object stimulates appetite, or motion toward itself, it is good; if motion from itself, it is bad: and there is no distinction of good and evil other than this.[2] From the consciousness of appetite and aversion, thus explained, arise all the emotions — joy and grief, hope and despair, fear, courage, anger, *etc.* All have reference to the past, the existing or the expected attainment of an object of appetite or escape from an object of aversion. Happiness, then, or "felicity," as Hobbes calls it, consists in continual success in getting what one from time to time desires.

[1] *Leviathan*, chap. vi. This is an extraordinarily effective chapter, and shows Hobbes's method at its best.

[2] "These words [good and bad] are ever used with relation to the person that useth them; there being nothing simply and absolutely so, nor any common rule of good and evil to be taken from the nature of the objects themselves." — *Ibid.*, chap. vi (Morley's ed., p. 32).

For there is no such thing in life as perpetual tranquillity; life "can never be without desire nor without fear, no more than without sense." Happiness, therefore, is "a continual progress of the desire from one object to another, the attaining of the former being still but the way to the latter."[1] The means for the attainment of these never failing objects of desire are what Hobbes calls "power," and may consist in superior faculties of body or mind, or in "riches, reputations and friends," or in the "secret working of God which men call good luck."[2] Either or all these powers may be available to a man and may in varying degrees promote his happiness; but the greatest of all powers — the instrumentality by far the most efficient for the attainment of men's desires — is that which combines the powers of many men united by common consent — the commonwealth.

On such a doctrine of human character, ends and motives as a foundation, Hobbes proceeds to adapt the prevalent concepts of political science to the requirements of his superstructure. He is as independent of established conventions in the later as in the earlier phase of his work. The ancient and familiar terms of political theory are adopted, but are redefined and endowed with entirely new relations and significance. The state of nature, the law of nature, the governmental contract, natural rights and sovereignty — in short, the entire apparatus of contemporary political philosophy — assumed under the bold

[1] *Leviathan*, chap. xi (p. 52). [2] *Ibid.*, chap. x.

manipulation of Hobbes an aspect that was as attractive to the pure intellect as it was repulsive to the theological prejudice of his time. Upon the appearance of the *Leviathan* he was recognized at once as the chief of the rationalistic school of philosophers. The effect of this doubtful preëminence upon his personal fortunes illustrates the character of his work. As a defender of royalty he expected the marked favour of Charles II when the *Leviathan* appeared in Paris. But both Anglican and French divines in the *entourage* of Charles found atheism and all things dangerous in the book. "*Non istis defensoribus*," was their cry; and Hobbes not only was denied the royal favour but even feared for his life in Paris. Accordingly he returned to England and accepted the protection of Cromwell.

2. *The State of Nature*

In the previous chapters of this history we have become familiar with the idea of a natural or primitive condition of men, anterior to the appearance of social or political life. The idea has appeared uniformly in a historical aspect — as expressing conditions that once had objective actuality. But as Hobbes presents the concept, the historical aspect is wholly disregarded and the natural state of man appears as an inevitable conclusion from the first principle of human nature. Human actions have for their basis — and their only basis — "a perpetual and restless desire of power after power, that ceaseth only in death."[1] That is, as follows

[1] *Leviathan*, chap. xi.

from the definition of "power" mentioned in the last section, every individual is striving for the gratification of his appetites; and these appetites vary from individual to individual according to bodily constitution, education and experience. But whatever diversity there may be in appetites, in ability to satisfy them there is for all practical purposes equality of all men. Conceding the obvious differences among individuals in physical and mental faculties, Hobbes holds that in the long run these substantially offset one another. The man who is weaker physically may prevail by craft and cunning: and as to wisdom, the fact that each thinks himself the wisest is itself ground for the inference that all are substantially equal; "for there is not ordinarily a greater sign of the equal distribution of anything than that every man is contented with his share."[1] Such is the somewhat cynical form in which is sustained the ancient dogma that all men are by nature equal.

As a result of the foregoing doctrines the normal condition of mankind is held to be that of unceasing strife. This condition has three chief immediate sources: first, the competition between man and man for the means to gratify identical appetites; second, the fear in each lest another surpass him in power; and third, the craving for admiration and for recognition as superior. In other words, the natural relation of each individual to every other is determined by motives of competition, distrust and love of glory.[2] But these are the characteristics of actual or potential

[1] *Ibid.*, chap. xiii. [2] *Ibid.*

war; and such is indeed the condition of man in his natural state. The hand of each is against all; and so long as there is no common superior to hold them in awe every man is the enemy of every man; science, art, letters and the other evidences of enlightenment remain unknown; and human life is "solitary, poor, nasty, brutish and short."

Such is in essence Hobbes's celebrated theory of the state of nature as the "*bellum omnium contra omnes.*" It is founded on the notion that man is purely egoistic in his emotions; but however questionable this psychology may be, the conclusions from the theory have a very clarifying influence on certain conceptions of political ethics. From the assumptions already described the natural state of man presents logically the following characteristics. First, there exists no distinction of right and wrong. The impulses which move men are the passions which are born in them, and there is no standard by which any one of these passions may be judged morally different from any other. Only when some rule is established by which to compare acts can rightness or wrongness be predicated; but such rule, or law, can be set up only after a lawmaker is agreed upon, and such agreement *ipso facto* terminates the state of nature. Secondly, there is no distinction of just and unjust in the state of nature. Here comes in Hobbes's idea of justice, — the antipodes of Plato's. Where there is no common power over men, Hobbes argues, there is no law, and where there is no law there can be no injustice. Justice and injustice are

not faculties of the individual, like sense and emotion; and therefore they have a place, not in a consideration of the natural or solitary man, but only where men are regarded as united to one another by social bonds. Prior to or independently of the formation of society there is no such thing as justice. And finally, on analogous principles there is no such thing as private property. Where each individual stands in precisely the same relation as every other to all external objects, might alone determines right; "only that to be every man's that he can get, and for so long as he can keep it."[1]

That such a state of nature as he conceives ever had a general objective existence, Hobbes does not for a moment maintain. But he very suggestively sets forth certain facts which sustain his contention that the fundamental attitude of every man toward his neighbour, even in social life, is that of distrust and potential war.

> When taking a journey, he arms himself and seeks to go well accompanied; when going to sleep he locks his doors; when even in his house he locks his chests; [consider] what opinion he has of his fellow-subjects, when he rides armed; of his fellow-citizens, when he locks his doors; and of his children and servants, when he locks his chests. . . . Does he not there as much accuse mankind by his actions as I do by my words?[2]

Moreover, the conditions of life among the American Indians exhibit, Hobbes thinks, the actuality of his natural state. So, too, the times of civil war in civilized states, when, in the lack of an effective

[1] *Leviathan*, chap. xiii. [2] *Ibid.*

common power, the natural passions of men resume sway. And finally, the standing attitude of sovereigns toward one another — "having their weapons pointing and their eyes fixed on one another;" that is, their forts, garrisons and guns in readiness and their spies ever active, — all this is eloquent of the normal and natural relation between beings with no common superior.

3. *Natural Rights and Natural Law*

In leading up to his theory of the transition from the natural to the political aspect of mankind, Hobbes made a clear distinction between natural right and natural law — *ius naturale* and *lex naturalis*. The relation of these terms to one another had long been an obscure and unsettled question; the solution proposed by Hobbes lacked nothing in clearness, whatever it may have lacked in other respects.[1] Natural right, he declared, signifies simply the liberty possessed by every man of doing what seems best for the preservation of his existence. "Liberty" here means the absence of external impediments; one's *power* to preserve himself may be limited by circumstances — as when a man is lost in a desert, but so far as his power extends, his *right* is by nature complete. Natural law, on the other hand, implies primarily restraint rather than liberty. It designates a rule, found out by reason, forbidding any act or omission that is unfavourable to preservation. By *right* of nature, every man has a claim to

[1] *Leviathan*, chap. xiv. Also, *De Corpore Politico*, chap. i.

whatever will satisfy any of his desires; by the *law* of nature he is obliged to renounce some part of his claim for the more certain realization of the rest. The equal natural rights of all men are what make the state of nature a state of war, with the maximum uncertainty in respect to life, the first of human desires; the natural law is a body of principles which reason devises for making life secure.

From this conception of the law of nature it follows readily that the first precept of that law is, to seek peace and observe it — to escape, that is, from the state of war which is natural to men. But this, reason shows, can be accomplished only by the abandonment by each of his natural right to all things. The abandonment must be general and reciprocal. Each must covenant with each to refrain from the exercise of his natural liberty. This obligation — to lay down the natural right — is the second of the laws of nature. The third is, "that men perform their covenants made."

This subject — the nature of promises and contracts and of the obligation involved in them — is discussed by Hobbes with much elaboration,[1] and in his most characteristic vein. The keeping of promises is in his system all that is meant by "justice"; and "injustice" is but the failure to keep them. The making of a promise has, like every other voluntary act of man, self-interest — some desire for good to the person making it — as its motive. There is in the nature of the act, therefore, no assurance that

[1] *Leviathan*, chaps. xiv, xv.

the thing promised will be performed. If performance becomes, by change of circumstances, less to his advantage than non-performance, the latter is naturally his right. The only guarantee for the keeping of faith is the certainty that the greater good lies in the keeping. But this certainty only exists when a superior power stands ready to impose some evil for the failure to keep the pact. No such power exists in the state of nature as between man and man; hence covenants and contracts are of no significance in that state. It is for this reason that justice, which is merely the performance of contracts, has no existence in the natural state; where all men are so nearly equal that none has power to hold the rest to their agreements, there is no basis for distinction between just and unjust. This doctrine as to the nature of justice has important consequences at various critical points in Hobbes's system, and must be carefully borne in mind by any one who would properly appreciate his philosophy.

The further dictates of the law of nature are set forth[1] in a long series in which every item is precisely and ingeniously derived from the initial principles, (1) that the purpose of the law is the substitution of peace for war as the prevalent relation among men, and (2) that self-interest is in last analysis the sole motive of human actions. "Gratitude" is such a bearing toward one who has (for his own interest, of course) done a favour that he shall be willing to do another. "Complaisance," or sociabil-

[1] *Leviathan*, chap. xv.

ity, "pardon," or a forgiving disposition, modesty, mercy, — are shown to conduce to peace, and their opposites, to war. "Equity," also, falls here within the category of social virtues, and is identified by Hobbes with what from Aristotle's time had been known as distributive justice. For practical purposes the laws of nature may be condensed, he holds, into the single precept, "Do not that to another which thou wouldst not have done to thyself."

These laws of nature are binding upon men not in the sense that every one should under all circumstances actually observe them, but that every one should desire their observance. For if a single individual should be modest and sociable and faithful to his promises while all the rest of men were the contrary, he would merely destroy himself, which is contradictory of nature itself.[1] These prescriptions of virtue are thus in the strictest sense social. They have objective validity only when they are generally lived up to; and conversely, social existence among men is conceivable only so far as they are lived up to. They are thus the logical conditions of human society and of political life. Moreover, the law of nature, as thus understood, is easily seen to be, as the moral philosophers have always declared, immutable and eternal, but not for precisely the reasons that they have alleged. It is immutable and eternal because its various precepts are the indispensable means to the maintenance of peace, and peace is re-

[1] *Ibid.* *Cf.* Machiavelli, *The Prince*, chap. 17; *Discourses*, I, 2. See *Political Theories, Ancient and Mediæval*, pp. 303 *et seq.*

garded by all men as the indispensable means to the fullest satisfaction of their desires. Conformity to these precepts — gratitude, good faith, equity, mercy, *etc.* — is "good" and "virtuous" because it brings this satisfaction in greatest measure, and for no other reason. This, Hobbes declares, is the true basis of moral philosophy; and those who have sought other foundations for distinctions of right and wrong have gone hopelessly astray.

One further point is essential to a clear understanding of the philosopher's view as to the laws of nature. They are not, in fact, laws at all, though commonly called so: "for they are but conclusions, or theorems, concerning what conduceth to [self-] conservation and defence; whereas law properly is the word of him that by right hath command over others."[1] Hobbes thus introduces a capital distinction between morality and legality which is more fully developed in another part of his system.[2] He concedes, however, that the dictates of reason which figure as laws of nature may be found in the Bible as commands of God, and from that point of view they may properly be called laws.

4. *The Origin of the Commonwealth*

Having deduced from his first principle of human nature natural rights and natural law, Hobbes proceeded, in the second part of the *Leviathan*, to develop an equally novel doctrine as to the contractual rela-

[1] *Leviathan*, chap. xv, end. [2] *Cf. infra*, pp. 293 *et seq.*

tion which had come to be generally recognized as the ultimate basis of the state. The earlier forms of the contract theory have been described with some fulness in preceding chapters. They have in most cases expressed what is known as the governmental contract — the agreement between ruler and people; rather than the social contract — the agreement through which a people is created. It is the distinction of Hobbes that he propounded most precisely and explicitly a theory of the social contract and gave to it a form that was to dominate political philosophy till the whole contractual manner of thinking fell into desuetude.

There are two ways, Hobbes holds, in which a commonwealth may come into existence: first, by institution, when men of their own impulse unite; second, by acquisition, when the impulse to union comes from the superior power of some individual who threatens them with destruction. Both ways are really contractual in essence, though it is the commonwealth by institution that particularly exemplifies the social contract. To this species we will follow him in giving our first attention.[1]

The state, like every other manifestation of human energy, has its origin, according to Hobbes, in the foresight of men in their own preservation — the rational desire to escape from the natural condition of war. The "social impulse," in which other philosophers find the first cause of the state, is not the ultimate fact. Reason shows that the social impulse

[1] *Leviathan*, chaps. xvii, xviii.

has a cause that is more remote, namely, the desire for self-preservation. The ceaseless conflict and strife that are inevitable so long as men follow, in the state of nature, the dictates of their particular appetites and exercise their particular powers for the satisfaction thereof, can be escaped, reason shows, only by setting up a common power that can at the same time restrain and protect every individual. For the establishment of this common power it is essential that a single will be constituted that shall take the place of the multitude of wills previously active.

> A commonwealth is said to be instituted when a multitude of men do agree and covenant, every one with every one, that to whatever man or assembly of men shall be given by the major part the right to present the person of them all, that is to say, to be their representative; every one, as well he that voted for it as he that voted against it, shall authorize all the actions and judgments of that man or assembly of men in the same manner as if they were his own, to the end to live peaceably amongst themselves and be protected against other men.[1]

Each individual says, in effect, to every other:

> I authorize, and give up my right of governing myself to, this man or to this assembly of men, on this condition, that thou give up thy right to him and authorize all his actions in like manner.[2]

Conceived as based on such a formula, the state is, Hobbes holds, a real unity — a single personality taking the place of many. Instead of a multitude of wills pressing in perpetual disharmony and conflict for the preservation of life and the attainment of happiness, there appears a single will determining the

[1] *Leviathan*, chap. xviii. [2] *Ibid.*, chap. xvii.

common welfare and achieving it through the irresistible might that inheres in the joint powers of all. The individual has resigned his natural rights; the state has assumed them. Its right, like his originally, is commensurate with its might; and its might is the totality of the powers of those who have instituted it.

Such is the origin and nature of "that great 'leviathan,' or rather, to speak more reverently, of that 'mortal god,' to which we owe, under the 'immortal God,' our peace and defence."[1] How adroitly Hobbes shaped the formula of his contract for the ulterior purposes of his philosophy will appear as we proceed. At present it is useful merely to notice certain features of the formula which are peculiarly significant. In the first place, the parties to the contract are individual natural men — not groups of any sort, not the "people," vaguely defined, and not any superior being or sovereign. A superior, or sovereign, exists only by virtue of the pact, not prior to it. Individuals, naturally equal, agree one with another to give up their natural rights to a common recipient; this recipient becomes by that fact their superior, but he himself is no party to the contract. In the second place, it is to be observed that submission to the voice of the majority in respect to the designation of the sovereign is an article of the contract; hence there is no ground left on which a minority can base just resistance. Finally, the end sought by the parties — internal peace and defence from external foes

[1] *Ibid.*

— is an integral element of the contract, and must therefore be regarded as a condition of its continued existence. Each of these features has an important relation to the further development of Hobbes's theory.

The "commonwealth by acquisition" is in its essential character not different from the "commonwealth by institution" already explained. The basis of each is fear; but in the one men fear the person who is said to acquire the power; in the other they fear one another.[1] It is a characteristic and reiterated dogma of Hobbes that fear of death or violence does not naturally make void a contract or covenant entered into in view of such emotion; indeed, as has already appeared, fear is the indispensable condition of the contract through which civil society is created. That the laws of a commonwealth once created will not enforce contracts made under duress, is nothing to the point. Here fear of the sovereign and his will supersede the fear and the power which constrain to the keeping of the pact; the agreement is void, not because it was made under the influence of fear, but because a power superior to both parties authorizes one of them to disregard it and forbids the other to visit a penalty upon him. On such principles Hobbes logically holds that the submission of a multitude to one who threatens them with overwhelming force is a contract in the same sense as the submission to one whom they deliberately select. Hence the relations of sovereign to subject are precisely the same in the two species of commonwealth.

[1] *Leviathan*, chap. xx.

All power thus rests upon the original consent of the governed. This idea Hobbes consistently applied even to paternal and despotic dominion, *i.e.* the power over children and over slaves. He proves, with demonstration more ingenious, perhaps, than convincing, that parental dominion springs "from the child's consent, either express or by other sufficient arguments declared;" and as to slaves, the ancient theory of the Roman jurists, that their condition rests upon a covenant for the preservation of their lives, is readily adapted to the requirements of the Hobbesian system.

Having seen now the principles and process at the origin of political institutions, let us follow out the consequences which Hobbes derives as to the essential factors in the conception of sovereignty.

5. *Sovereignty and Liberty*

By the sovereign is meant that individual or assembly who, by the terms of the contract on which the commonwealth rests, is authorized to will in the stead of every party to the contract, for the end of a peaceful life. From the principles already laid down, especially the definition of justice as merely the observance of contracts, the following conclusions are held by Hobbes to be inevitable:[1]

1. Every act of disobedience by a subject is unjust, whatever the ground alleged for the act. An agreement to recognize a new, in place of the former, sovereign without the latter's permission, is unjust,

[1] *Ibid.*, chap. xviii.

because it is a violation of the pact by which his will was recognized as the will of each of the persons contracting. Subjects slain by a sovereign for attempting to resist or depose him are logically suicides; for they have formally made all his acts their own. Nor is the situation changed when a covenant with God is alleged as a basis for disregarding the rights of the sovereign; for the sovereign is the only agency through which a contract with God can be made. But this pretence of a covenant with God (the Puritans' argument) is, Hobbes thinks, an "evident lie, even in the pretender's own conscience."

2. No breach of the original pact by the sovereign can be set up as a ground for its violation by the subject. For the sovereign is no party to the contract. It is an agreement of each man of a multitude with every other to give up his natural rights in favour of a common or third party, but this third party, the sovereign, gives up nothing, and retains all his natural rights and powers.[1] Hence the sovereign cannot do injustice to his subjects; for injustice is merely the violation of covenant, and the sovereign is by hypothesis not bound by any covenant. The acts of a sovereign may involve iniquity — *i.e.* unequal and partial treatment of individuals — but not injustice.

3. There is no justification for resistance by the

[1] The absurdity of the contention that the sovereign is a party to the pact is most manifest, Hobbes says, when the sovereign is an assembly rather than a monarch. "For no man is so dull as to say, for example, the people of Rome made a covenant with the Romans to hold the sovereignty on such or such conditions; which not performed, the Romans might lawfully depose the Roman people."

minority of a community on the ground that it did not choose the sovereign selected by the majority. The dissenters either did or did not agree to abide by the decision of the majority: if they did so agree, it is unjust not to conform to their agreement; if they did not so agree, they are, in respect to the rest, still in a state of nature, and all the rights of war against them are available without any question of justice.

Sovereignty, therefore, implies an absolute exemption from any just resistance or interference on the part of subjects. Unlimited power and unfettered discretion as to ways and means are possessed by the sovereign for the end with a view to which civil society is constituted, namely, peace and escape from the evils of the state of nature. The specific functions through which this supreme end is attained include, according to Hobbes, the following:

First, the exercise of final judgment as to the expression of opinions and doctrines. So prolific in discord is freedom of expression that the great end of civil life is ever in peril without a strict supervision of speech and writing by the supreme authority. This is Hobbes's concise reply to the Miltonic plea for unlicensed printing.

Second, "the whole power of prescribing the rules whereby every man may know what goods he may enjoy and what actions he may do, without being molested by his fellow-subjects; and this is it men call 'propriety.'"[1] In other words, Hobbes ascribes to the sovereign unrestricted power over property,

[1] *I.e.* property.

with no such qualification in behalf of private rights as Bodin had taken care to set up.[1] The Englishman's view is, however, precisely logical. The natural right to all things which originally inheres in each individual has been transferred by the pact, and hence the sovereign possesses it in its entirety. There is no room in Hobbes's theory for the ancient dogma that private property is secure by a law of nature that is above the supreme law of the state. The discretionary regulation of private property is, in his view, the chief content of that lawmaking which constitutes the leading function of the sovereign.

Third, the sovereign has the right of determining all controversies between subjects, *i.e.* the right of judicature. This is an obvious inference from the prime end of maintaining internal peace.

Fourth, the whole right of making war and peace with other states, with absolute control of the resources of the subjects in carrying out the policy chosen, is an attribute of sovereignty. This again is an obvious inference from first principles; for the military organization of the people is the sole security for that defence which is a prime end of the state, and the unity of this organization can exist only through a definite head. It is, moreover, only in the military resources that sovereignty has existence; for by hypothesis the right of the commonwealth is identical with its might, and the army is the visible organ of this might.

[1] *Supra*, p. 99.

Fifth, and lastly, the sovereign is the sole source of official authority in counsellors and magistrates, of honours, wealth and privileges conferred for service to the state, and of the gradations of dignity among the recipients of such rewards.

Such are the marks by which the possession of sovereignty may be recognized. These attributes are incommunicable and inseparable. Other powers, such as the coining of money, usually possessed by the sovereign, may be granted away; but the absence of any one of those above enumerated is fatal to the ability to maintain peace and is therefore fatal to the idea of a commonwealth. Whatever may be the inconveniences of such absolute power in the hands of any man or body of men, the only alternative is the incomparable misery of the state of nature — "that dissolute condition of masterless men, without subjection to laws and a coercive power to tie their hands from rapine and revenge."

As the complement of his very positive conception of sovereignty, Hobbes formulates a doctrine of liberty which is in the sharpest contrast to that which was set forth by the Levellers and by Milton. His philosophy is indeed, like theirs, individualistic. He takes the interest of the individual man as the starting-point of his political theory; but he does not recognize that interest as involving the retention of any rights as against the state when once constituted. There is in his discussion of liberty[1] a cold and rigidly logical dissection of the glowing and

[1] *Leviathan*, chap. xxi.

generous ideals which the humanistic adversaries of monarchy had set up. The most prolific source of error he finds to be the confusion of "liberty" signifying the independence and self-determination of a commonwealth with "liberty" as predicated of a citizen in relation to his own state; a blind acceptance of the authority of Aristotle, Cicero and other ancients has been, Hobbes thinks, the means through which this error has been propagated. In truth, liberty signifies merely the absence of external impediments to motion, or, in the case of rational beings, the absence of impediments to doing what they have the will to do. It is consistent with fear; as when a man at sea is at liberty to throw overboard his goods when possessed by fear that the ship will sink. It is consistent with necessity; as man's freedom to do what he will is accompanied by the necessity of conforming to the eternal will of God. Liberty in this sense is the attribute of every commonwealth, that is, of the sovereign in whom the will of the whole is unified. But for the individual within the commonwealth liberty exists only with a radical qualification. Each individual has, in the original pact, set up another will to supersede his own, and the expressions of this will, that is, the laws of the state, backed up by the overwhelming power of the state, constitute an impediment that puts him in a totally different position from that of a sovereign. In short, the liberty of the subject can properly be thought of only in relation to the laws of the commonwealth.

From this point of view the content of individual

liberty within the state has nothing of that alluring scope which Milton described. It is summed up, according to Hobbes, under two categories: first, whatever the sovereign, that is, the law of the land, has not forbidden; and second, what cannot, by the nature of the original pact, be given up. As to the first of these elements, it is not at all to be understood that the liberty of the subject is in any sense a limitation upon the right of the sovereign. Right is still but might, and the power of the sovereign to take away the life or the property of the subject is not affected by the fact that such power has not been announced in any formal law. No claim of injustice can be raised against the sovereign who kills or banishes a subject without a legal ground; for justice is but the keeping of covenants, and there is no covenant between sovereign and subject. Equity may be violated by such an act, but not justice. Thus the Athenian practice of ostracism, Hobbes points out, was often iniquitous but never unjust; it was the act of the sovereign by right of sovereignty, not the act of the magistrate enforcing a law.

While the liberty which consists in what the sovereign has not forbidden is revealed by such considerations to be but Dead Sea fruit, the individual receives from Hobbes a scarcely more nourishing gift in the second element of liberty — what could not be surrendered in the original contract. Every covenant of man has in view, by hypothesis, the interest of him who makes it. The pact by which the state is formed must be interpreted in view of this princi-

ple, and must be construed in every case as designed to preserve the life of the individual. Hence there is no promise by the latter to do what contravenes this end. Without injustice, therefore, the individual may, in disobedience to the sovereign's command, refuse to kill himself, resist assault, refuse to accuse himself of an offence that would jeopardize his life, and, with certain qualifications,[1] refuse to serve in the army. He may, indeed, be slain by the sovereign for disobedience in any of these respects; but there would be no question of justice involved. All acts in connection with such matters lie outside the sphere of civil relations and are determined by natural right.

Such is the doctrine by which Hobbes shuts out the pretensions of those who maintain that personal liberty, private property, freedom of expression, freedom of conscience and other privileges are rights in the individual which may be infringed by the sovereign only through injustice. There is in his method an obvious element of dialectic sophistry; for some of his most telling points depend upon his definition of justice, which is designedly made so narrow as to exclude many relations of expediency or utility which his adversaries, and indeed all philosophic usage, include within the term. But apart from this, Hobbes is, like Bodin, on impregnable ground in holding to the thesis that the happiness of man in society is inseparable from the recognition of a supreme power, in whose unquestioned authority, what-

[1] One is, that he furnish a substitute.

ever its inconveniences, lies the only escape from the greater inconveniences of anarchy.

In case anarchy do actually come upon a society, and the sovereign no longer possess the power to give the subjects that protection which is for them the sole end of the social pact, their obligation to the sovereign *ipso facto* ceases. Such a situation may arise as a result of war, either foreign or civil. In the case of foreign war, Hobbes's principle assures a simple explanation of the result when either subject or sovereign monarch falls into the power of the enemy.[1] More complex is the case of civil war. May a subject without injustice abandon his allegiance to an old sovereign when unjust rebellion has triumphed? Yes, Hobbes in substance answers; for in the existing situation, which is really a recurrence of the state of nature, all considerations of justice disappear and the individual is necessarily determined in his acts by the single motive of gaining the protection which *de facto* the former sovereign no longer can give him. The precise moment at which submission to the conquering power becomes the privilege of the subject, is in general that at which the means of preserving his life are in the possession of that power.[2] This doctrine was emphasized by Hobbes in the "Review and Conclusion" which he wrote as a postscript to the *Leviathan*, and his enemies did not fail to point out that his philosophy here was

[1] *Leviathan*, chap. xxi (Morley, p. 105).

[2] If the subject be in the military service of his sovereign, he is bound to remain faithful so long as there is enough of an army left to assure him the degree of protection that a soldier may expect. — "Review and Conclusion" (Morley, p. 316).

particularly adaptable to the justification of one who, like himself, had deserted the royalists and made his peace with Cromwell.

6. *Government and Law*

The conception of sovereignty is the key to all Hobbes's discussion of government and law. He does not lay any special stress, as Bodin did, on the distinction between sovereign and government, but merely assumes that all essential and ultimate attributes of political existence and action are inherent in the former. The kinds of commonwealth are determined by the single criterion of the number of persons constituting the sovereign. When one man is vested with all the powers of the multitude who constitute the society, the state is monarchic; when these powers inhere in an assembly to which every man may belong if he choose, it is democratic; when the assembly is limited to certain men, the state is aristocratic. No other form than these three is conceivable. A "mixed form" of state is as absurd to Hobbes as it had been to Bodin, and such alleged forms as "tyranny" and "oligarchy" have no basis save in the feelings of those who use the terms.

> For they that are discontented under monarchy call it tyranny; and they that are displeased with aristocracy call it oligarchy; so also they which find themselves grieved under a democracy call it anarchy, which signifies want of government; and yet I think no man believes that want of government is any new kind of government; nor by the same reason ought they to believe that the government is of one kind when they like it, and another when they dislike it or are oppressed by the governors.[1]

[1] *Leviathan*, chap. xix.

Among these three forms of state which alone are thinkable there is no distinction whatever in extent of power; in each the sovereign has the same attributes as in either of the others. The question as to which of the three is preferable depends not at all on the fact that one or the other is more or less absolute, but on the fact that one or the other is better adapted to direct the same absolute power to the single end of maintaining peace and security. On this basis Hobbes makes a temperate and strong but not novel plea for monarchy. Among the advantages of this form are (1) the identity of private with public interest in the sovereign — the fact that the wealth and glory of the state are the wealth and glory of the monarch; (2) the greater consistency and freedom from fluctuation in policy — since the natural inconstancy of the human mind, bad enough in an individual, is greatly multiplied in an assembly; and (3) the fact that the iniquitous bestowal of riches and power on favourites — a prime evil of monarchy — is a much worse evil in the other forms of state, since the favourites of a monarch are few, while the favourites of a group of men are proportionately many. Of the inconveniences of monarchy Hobbes evidently feels those relating to the succession to be the most serious, and he makes a most ingenious argument to show that the evils involved are multiplied and magnified in the other forms of state. In general he lays it down roundly and unqualifiedly that "there is no perfect form of government where the disposing of the succession is not in the present sovereign."

Hence elective and limited kings are in no sense true monarchs; their states are in fact democratic or aristocratic.[1]

It is clear from the foregoing, and is sustained throughout Hobbes's work, that his view as to the part of the sovereign in the affairs of a state is substantially that described by Bodin. All the organs of government — parliaments, corporations, magistrates[2] — are mere agencies for carrying out the sovereign will, and have life and authority only through this will. The functions which the sovereign must exercise in order to fulfil the end of its existence are described by Hobbes in the sense of contemporary institutions; the supervision and promotion of trade and industry,[3] the direction of education and the prescription of religious worship are no less a part of the sovereign's duty than the maintenance of physical peace and security within and without the dominion. The normal means for the performance of all these functions is legislation, and the relation of the sovereign to law is a capital feature of Hobbes's system.[4] Here the English philosopher, though starting from the same point as Bodin and actuated by the same general purpose, proved himself far superior in overcoming the ob-

[1] *Leviathan*, chap. xix.

[2] For Hobbes's theory of corporations, see *Ibid.*, ch. xxii; for magistrates, see chap. xxiii.

[3] The economic functions are treated quaintly and with a wealth of biological analogy in chap. xxiv, "Of the Nutrition and Procreation of a Commonwealth."

[4] *Leviathan*, chap. xxvi.

stacles that beset the way to the desired goal. Both thinkers were seeking to place the monarch of the day in a position logically secure against the factions who were putting forward claims to exemption from his authority under cover of divine and natural law and custom. To these claims Hobbes presented an unassailable bulwark.

The greatest improvement made by Hobbes upon his predecessor is undoubtedly to be found in the Englishman's analysis of the term "law." The so-called laws of nature are not, he says, really laws, but merely "conclusions or theorems concerning what conduceth to the conservation and defence" of men. "Law, properly, is the word of him that by right hath command over others."[1] The ultimate human right to command is vested in the sovereign by the contract through which the state is instituted. Civil laws, then, consist in expressions or other manifestations of the will of the sovereign, who himself is not bound thereby. Custom is law only because of the sovereign's will as manifested in his silence. Divine law is that which emanates from the will of God. Ultimately the law of nature may be regarded as divine law, though it is present to men not directly as a command, but as a body of principles found out by the reason. A directly revealed command of God addressed to a particular person or people is law proper, and is designated as "divine positive law."

Discriminating thus between the different kinds of law, Hobbes boldly grapples with the difficulties

[1] *Leviathan*, chap. xv.

bound up in the question of interpretation. He will not leave open here a refuge for the enemies of order. All laws, he says, need interpretation, particularly the unwritten law of nature. But this latter becomes law proper only when it is embodied in commands of the sovereign; and for the citizen the binding interpretation in this case, as in the case of civil laws pure and simple, is that of the sovereign, through his duly constituted judges. Hobbes has no patience with those who look to the moral philosophers for authority as to the law of nature, or to the commentators for the meaning of the civil laws.

The interpretation of the laws of nature in a commonwealth dependeth not on the books of moral philosophy. The authority of writers without the authority of the commonwealth maketh not their opinions law, be they never so true. That which I have written in this treatise concerning the moral virtues, . . . though it be evident truth, is not, therefore, presently law. . . . For though it be naturally reasonable, yet it is by the sovereign power that it is law.

And again:

When question is of the meaning of written laws, he is not the interpreter of them that writeth a commentary upon them. For commentaries are commonly more subject to cavil than the text, and therefore need other commentaries; and so there will be no end of such interpretations.

As to custom, it is law not because it has long prevailed or because it is reasonable, but because the sovereign clearly wills that it shall be binding. Against that will neither the length of time during which it has prevailed, nor the opinion of any person

that it is reasonable, has any effect to maintain it as law. All law, indeed, must be reasonable, but the question always is, whose reason is the standard. Here Hobbes concisely repudiates Coke's elaborate conception of law as the "artificial perfection of reason" obtained by the lawyers and jurists, and declares that the only test is the sovereign's reason as embodied in the sovereign's will.

Thus the footing which the factions have found in various interpretations of the moral and the civil law and of custom is swept away, and the sovereign stands triumphant. But there remains one other hope for the adversaries of absolutism. What if they could oppose to the sovereign a directly revealed command of God? Such a command, Hobbes readily admits, must supersede all human authority. But could the knowledge of such a command be independent of human judgment? If all men, in the presence of one another, should receive an identical manifestation of God's will, that would be conclusive. But when some one man or body of men comes forward claiming to have received privately a revelation from God, how shall other men be satisfied of its authenticity? Hobbes can find no adequate answer to this question, and his solution of the whole problem is reached on the same lines that have been followed in connection with the law of nature and the civil law.

In all things not contrary to the moral law, that is to say, to the law of nature, all subjects are bound to obey that for divine law which is declared to be so by the laws of the commonwealth.

And the reason of this is simple.

> If men were at liberty to take for God's commandments their own dreams and fancies, or the dreams and fancies of private men, scarce two men would agree upon what is God's commandment; and yet in respect of them, every man would despise the commandments of the commonwealth.[1]

With logic like this there is no possibility of such confusion as had arisen in previous systems over the relation of the sovereign to the laws of God, of nature and of nations. So far as the subjects are concerned, the sovereign's formal judgment *is* the law of God, the law of nature and the law of nations. The qualifications introduced by Bodin in the original theory of sovereignty[2] are thus avoided, and, moreover, the pains taken by Grotius to hedge in the sovereign by the *ius gentium* are rendered nugatory. Hobbes lays down in round terms, what has been shown to be implied though elaborately denied by Grotius, that "the law of nations and the law of nature is the same thing."[3] Every sovereign is in a state of nature as to every other sovereign, and the law of nations is merely the dictates of reason as to the conduct best adapted to secure the desires of each.

7. *State and Church*

The general attitude of Hobbes toward the relation between religion and politics is pretty clearly indicated in the doctrine just described as to divine and

[1] *Leviathan*, chap. xxvi. [2] *Supra*, p. 98.

[3] *Leviathan*, chap. xxx, end. It is interesting to notice also that Hobbes fully recognizes the law of nations as international law: "the offices of one sovereign to another, which is commonly called the 'law of nations.'"

civil law. But it was not the philosopher's way to dismiss so prominent a topic of current controversy with anything less than the most exhaustive examination. Hence nearly half of the *Leviathan*[1] is devoted to an exposition of the theological and ecclesiastical principles that supplement its moral and political theory. The shock and repulsion produced by the Hobbesian system in the circles of traditional and established divinity is intelligible to the most casual reader of the philosopher's chapters. He applies to the sacred mysteries of the Christian religion the method of precise and unemotional definition, and he deduces his concepts of God and faith and worship from his dogmas as to matter and motion and human desire. Atheist he is not; but it is easily conceivable that he should have been considered one by the pious souls of his day, for his God is much more like no God than like the God of Judaism or of traditional Christianity. Hobbes was in fact a deist — the earliest of the group which was in the next century to include many men of great power. Ecclesiastically he was Erastian, and his exaltation of the political sovereign left no room for any church save as a dependency of the sovereign will.

A church, as signified by natural reason and by the teachings of Scripture, Hobbes defines thus:

> A company of men professing the Christian religion, united in the person of one sovereign, at whose command they ought to assemble, and without whose authority they ought not to assemble.[2]

[1] Part III, "The Christian Commonwealth"; and Part IV, "The Kingdom of Darkness."

[2] *Leviathan*, chap. xxxix.

It follows from this (1) that any body of men meeting for worship without the sovereign's command is no church, but merely an unlawful assembly; and (2) that there is no such thing as a universal church, since there is no all-inclusive commonwealth. Dissenters and Roman Catholics are stripped of their ecclesiastical pretensions by these Hobbesian dogmas, and the established national church is left alone with claims of rights. But the ancient dignity and jurisdiction of even the national church are at once insulted by the philosopher's downright repudiation of such a concept as that of "spiritual government." "'Temporal' and 'spiritual' government," he says, "are but two words brought into the world to make men see double and mistake their lawful sovereign." There is no government in this life but the temporal; any other idea leads merely to faction and civil war between the state and what is called the church.[1] Moreover, Hobbes leaves no hope for those who would maintain for ecclesiastical dignitaries some peculiar and independent authority under the designation "pastoral." The sovereign, he holds, is the supreme pastor and the source of all authority connoted by that name. He, and he only, has his authority immediately from God; bishops — and here Hobbes is especially offensive to the Anglican divines of his day — have their dignities not *Dei gratia*, but *Regis gratia*.[2]

[1] *Leviathan*, chap. xxxix, end.

[2] *Ibid.*, chap. xlii. The sovereign, Hobbes gravely argues, is the supreme pastor of his subjects and has full authority to preach, baptize and administer the sacraments. He delegates this authority to

These extreme doctrines are sustained in the *Leviathan* by reasoning which involves, not only the definition and deduction that are employed in the purely political parts of the work, but also the pursuit of the theologians into their special and familiar field of citation and interpretation of the Bible. The ultra-rationalistic spirit in which Hobbes deals with the old texts and adduces new gives results that are often startling even at the present day.[1] Bellarmin, as the most effective exponent of the claims of the Papacy, receives the honour of a step-by-step refutation;[2] the doctrines of the Separatists and Independents are treated incidentally to the general scheme of the work.

It is to be noted that Hobbes, stiff as he is in maintaining that the power of the sovereign in matters of religious worship is plenary, tends, nevertheless, as his rationalistic spirit would naturally suggest, toward general toleration as a policy. The truth of God's Word must, he believes, prevail in the long run without recourse to constraint. So long, therefore, as public disorders do not ensue, the "independency of the primitive Christians . . . is perhaps the best."[3] It is manifest, from the context of this passage as well as from other parts of his work, that the philosopher was actuated, in suggest-

the clergy for the same reason that he delegates the administration of justice to the judges — because he is too much occupied with other business to take proper care of this.

[1] Chaps. xliii and xlv contain some especially good examples of Hobbes's method.

[2] Chap. xlii (Morley's ed., p. 248).

[3] Chap. xlvii.

ing the expediency of toleration, less by interest in the cultivation of true religion than by thought for the freedom of inquiry in the field of physical science, whence he anticipated some such progress as has actually been made. In other words, Hobbes recurred to his original purpose, of securing through absolute sovereignty the external and physical peace that he thought essential to the most effective intellectual activity.

8. *Hobbes's Place in the History of Political Theory*

Hobbes is the first Englishman to present a system of political philosophy that can stand among the great systems of history. His work placed him at once in the front rank of political thinkers and his theory became from the moment of its appearance the centre of animated controversy and enormous influence throughout western Europe. So skilfully did he blend all the most conspicuous concepts of current political thought in his system and adapt them to his ends, that philosophers of all schools were forced to a recognition and discussion of his doctrine, whether by way of approval or by way of condemnation. The warring factions of Englishmen naturally found abundant fuel for the controversies that had long divided them as to the interrelationship of monarch and Parliament, of state and church. But it was the special achievement of Hobbes to lift the debate far above the special conditions of English politics and to extort the attention and re-

spect of the Continental philosophers whose thought lay in the more exalted plane of abstract science.

For twenty-five years before he wrote, Protestant Europe and the most progressive thinkers of all nations had recognized Grotius as the exponent of ultimate truth in political theory; but Hobbes's system was an undisguised attack on that of Grotius in method and in substance. The rationalism of the Continental philosopher, radical as it had appeared to his contemporaries, was a pale and empty simulacrum beside that of the Englishman. For the erudition with which Grotius eked out his reasoning, Hobbes had a superb contempt. The basis of moral and legal right in the reason he freely concedes, but he answers far differently from Grotius the vital question, "Whose reason?" Not from the sages, philosophers and orators of the pagan past nor from the saints and theologians of the Christian era, but from the head of the state alone must a people that has risen above barbarism seek the decisive judgment on any question of duty, whether political, moral or religious.

In setting up thus the will of the state as the source and criterion of all right, Hobbes not only parts company with Grotius and his school, but even goes beyond Machiavelli in exalting political authority. For while Machiavelli makes politics independent of religion and morals as a matter of practice, Hobbes sets politics above religion and morals as a matter of philosophic theory. No more extreme position has ever been taken by political science than that involved in the doctrine of Hobbes that

the law of nature and of nations and even the law of God have binding force upon the individual only through the will of the political sovereign.

In the ethical and juristic aspects of the philosophy of the state Hobbes thus gave positive and complete form to doctrines that were wholly foreign to the systems most widely prevalent in his day. His more purely political theories were not less novel and not less influential. His dogma that man is by nature unsocial and the enemy of his kind was in flat contradiction of the Aristotelian dogma which had been the accepted foundation of social and political science for centuries. His doctrine of sovereignty embodied a conception of absolutism in the state more far-reaching than that ascribed by mediæval ecclesiastics to the church. But notwithstanding his exaltation of the power of the state his theory was, in its foundation, wholly individualistic and rested on as complete a recognition of the natural equality of all men as was ever asserted by Milton or any other of the revolutionary theorists. It was for the purpose of deriving logically from a mass of free and equal individuals the concept of an omnipotent state that Hobbes developed that most distinctive of his innovations, a contract of individual with individual through which alone the state could come into being. This new form of the old contract idea was destined to a distinguished career in later political philosophy, until it reached the perfection that announced its extinction in the metaphysical tangles of Kant and Fichte.

The trend of objective history in England prevented

the ascription to Hobbes of the full measure of influence that he actually exercised. His political theory was naturally under a cloud during the reigns of Charles II and James II, when the theological basis of royal absolutism was the dominant doctrine; and again, when the Revolution of 1688 completed its work, there was, of course, no room in the foreground for any system which had been devised in the interest of absolute monarchy. In his native land Hobbes came to his own in respect of recognition only when, in the nineteenth century, it was perceived by certain logical thinkers that his principles were quite as well adapted to the purposes of an absolute Parliament as to those of an absolute king.[1] On the Continent, however, from the time the *Leviathan* appeared, its teachings assumed a conspicuous place in political science. Not only the rationalists, but also the adherents of the old theological school, manifested a strong sense of their dependence on the Hobbesian method and formulas. Grotius, too, continued to be the source of much inspiration; and as the field of the law of nature broadened by the exploration of the philosophers, the influence of the Dutch thinker became paramount with those who devoted themselves primarily to that field. While for those who still clung, though under existing conditions with ever increasing difficulty, to the study of more purely political theory, Hobbes continued for a century to be the leading authority. The sub-

[1] The revival of interest in the Hobbesian politics was due to the "philosophical radicals," James Mill, Molesworth and Grote. Molesworth edited the first complete works, 1839–1845.

mergence of the Hobbesian influence on the Continent becomes definitive only with the rise of that liberalism under Voltaire and Montesquieu which rejected at the outset the conception of absolute power in any state, whether monarchic or popular. But the inspiration of this movement was drawn from another English source — that of the Whig revolutionists, which we shall investigate later. For the present our task must be to follow the Continental philosophy in which the conflicting influences of Grotius and Hobbes were manifest.

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CHAPTER IX

CONTINENTAL THEORY DURING THE AGE OF LOUIS XIV

1. *General Condition of Continental Politics*

When England was just at the climax of the internal commotion out of which sprang the theories treated in the last two chapters, the continental powers of western Europe reached the formal conclusion of the great struggle that had engaged all their energies for thirty years. By the Peace of Westphalia, in 1648, a new order in the politics of Christendom became clearly discernible, and with the Peace of the Pyrenees, in 1659, which put an end to the lingering hostilities between France and Spain, the chief features of this new order were made distinct and definite.

In the first place, differences of religious creeds, which had been the ostensible cause of the outbreak of the Thirty Years' War, ceased henceforth to be even nominally a source of political activity. The later phases of that contest had been characterized by the cynical obtrusion of purely secular motives among the continental powers, and these motives were most obvious in the settlement. Religious toleration was not indeed formally recognized as a principle,

but Calvinism was put on an equal footing in Germany with the Catholic and Lutheran creeds, and this fact was significant of the theological liberalism which actual conditions were forcing to the front. With the Peace of Westphalia the formal and conventional preëminence of the Papacy in European diplomacy passed away. In the second place, the traditional unity and dignity of the imperial authority received at this time a fatal blow. Germany became a group of independent states and the power of the Emperor rested exclusively on the extent and resources of the hereditary Hapsburg dominions. At the same time the decline and weakness of the Spanish monarchy became so conspicuous that the question of partitioning its possessions began soon to engage the attention of the powers which events had raised to preëminence. Of these powers France, through the policy of Richelieu and Mazarin, had come out of the prolonged conflict easily the first in prestige, and with the assumption by Louis XIV of personal control of the government, in 1661, begins the epoch which is most appropriately associated with that monarch's name.

The general characteristics of the age of Louis XIV have been a large and essential part of every philosophic view of modern history. Voltaire presented them with consummate literary skill less than a quarter of a century after the death of *le grand monarque*. Politically it was an age of monarchic absolutism, with a basis partly national but tending always to become dynastic. Internal administration

was taken bodily into the hands of the royal court and the claims to local autonomy or to any important degree of local privilege were ruthlessly suppressed. Foreign policy was aggressive and unscrupulous, Machiavellian in the principles on which the claims to extension of dominion were asserted, and Grotian in the principles by which the exercise of sovereignty over lands and peoples was bandied from monarch to monarch. The age was an age, in Harrington's phrase, of men and not of laws. Louis XIV himself, whatever his limitations, was not the least of the strong men of his day. The Great Elector of Brandenburg, the three Charleses of Sweden, — X, XI and XII, — Peter the Great of Russia, and finally William of Orange, were contemporaries of the French king, and the careers of all alike reflected the tendencies which he made most conspicuous. With varying degrees of success and with varying degrees of enlightenment in their methods, these princes all strove for absolute power within their dominions and for extension of their territorial possessions; and the basal motive in each case was, not so much the promotion of their creed or the welfare of their subjects, as their own personal and dynastic aggrandizement.

While politics turned upon the rivalries and ambitions of these rulers and Europe was distracted by the warfare in which their projects were wrought into shape, there was little room for the discussion of political theory. Art, science, literature and philosophy did indeed receive, as is usual at such

epochs, substantial support and encouragement from the princes, who instinctively sought to embellish their courts with the products of genius. It was a period of notable, even marvellous, advance in physical and mathematical science, and the philosophers of the chief nations maintained an harmonious co-operation in their common pursuit without reference to the wars that divided their respective governments.[1] But in political science the list of names on the Continent that rise above the level of the merest commonplace is exceedingly short: Spinoza, Bossuet and Pufendorf — these are practically all. Of these three the ethics of politics rather than politics proper is the central theme of interest and discussion. As in all times of political storm and stress, the chief effort of philosophy was to get some basis for a moral judgment on the conditions against which it is the inevitable tendency of the philosophic temperament to protest. Spinoza and Pufendorf accordingly took up and carried out to further application the rationalistic systems of political ethics to which Grotius and Hobbes had given such widespread currency; while Bossuet, the ecclesiastic-courtier, recurred to the familiar methods of Christian theology, and justified the régime of his Bourbon master by the precept and example of the Israelitish Jehovah.

Among the nations of northern Europe when the age of Louis XIV began, the most important exception to the monarchic form of government was that of the United Provinces of the Netherlands, —

[1] *Cf.* Voltaire, *Siècle de Louis XIV*, chap. xxxiv.

the flourishing little aristocratic republic which was completing its first century of well-earned independence. In all but in name, the exceptional character of this government was lost in the turmoil which attended the aggressive policy of the French king and the aspirations of the House of Orange, but the tradition of a fairly wide intellectual and theological toleration persisted, at least in the great commercial centres of population, even after the Prince of Orange became to all intents and purposes the monarchic ruler of the United Provinces. Much the same influence which produced the work of Grotius in the first half of the century contributed to give character to the work of Spinoza in the latter half. Dutch political and commercial institutions were nearest of all continental nations to those of England; the Dutch ruler eventually occupied the English throne and brought England fully into the complications of continental warfare; and it was a Dutch philosopher through whom the greatest system of rationalistic ethical and political thought that England produced in the seventeenth century, was introduced into the current of speculation on the Continent. Our examination of the few figures who stood conspicuous in the age of Louis XIV in the field of politics may most appropriately begin, therefore, with the philosophy of Spinoza.

2. *Spinoza*

This gifted thinker, who was born when Hobbes was forty-four years of age yet preceded him to the

grave,[1] differed widely from the Englishman in the metaphysical foundations of his doctrine, but reached, nevertheless, many identical conclusions in the political and ethical field. Spinoza's philosophy was in a very large measure determined by the conditions of his life. His family were Portuguese Jews, living in Holland, which was at this time the securest retreat in Europe for the victims of civil and religious oppression. Spinoza's earliest exhibition of intellectual activity brought him into disgrace with the orthodox of his own race, and at the age of twenty-four he was cut off from the synagogue and made an outcast from the Jewish community.[2] He took up his residence with friends who were themselves adherents of a Protestant sect that was under the ban of the Dutch ecclesiastical order, and thus for all the rest of his short life he was immediately conscious, both through his own experience and through the situation of his friends, of the pressure of religious intolerance. During his lifetime, moreover, the Dutch Republic passed through vicissitudes that brought its peculiar institutions into earnest and widespread discussion. It is not to be wondered at, therefore, that the two most characteristic features of Spinoza's political philosophy should have been a plea for religious freedom and a demonstration of the scientific and practical excellence of the aristocratic republic as a form of governmental organization.

[1] Spinoza was born in 1632 and died in 1677; Hobbes's life extended from 1588 to 1679.

[2] Pollock, *Spinoza*, 2d ed., pp. 15 *et seq.*

In its ultimate character the philosophy of Spinoza was pantheistic. All existence was to him a unity, which might be called God or might be called nature, according to the standpoint of the speaker. In every special form of existence was manifested a common principle, namely, power (*potentia*); that is to say, in the very fact that anything existed was expressed a power by virtue of which it existed, and God or nature was merely the name for the totality of powers through which things were as they were. But Spinoza, in developing his philosophy from this dogma, was not, like Hobbes, materialistic. On the contrary, he regarded the essence of all things to be in what is known to us through reflection rather than what is known to us through the senses. But whatever the divergence shown by Spinoza from Hobbes in first principles, the similarity of the two philosophers' systems becomes obvious as soon as the border line of ethics and politics is approached. With the younger as with the older thinker, natural right (*ius naturale*) is nothing but natural power; man, like every other form of existence, has by nature no more controlling motive or guide for his actions than self-interest, and the ultimate demand of self-interest is self-preservation; philosophically, man's passions are as much a part of his being as his reason and are quite as appropriate means for securing his ends; the so-called social virtues are merely conventions through which individuals seek their particular good, and hence the observance of contracts, for example, has never any more substantial guarantee than that it is the lesser

of two evils. From these ideas of social ethics follows the obvious conclusion that the state is merely an arrangement through which a multitude of individuals seek their respective interests, and particularly that advantage which lies in the security of their lives through general peace and order. The essence of the state is a supreme power that is adequate to the task of compelling individuals, through hope and fear, to conform to its commands. Such power can exist only through the union of the powers of many individuals, and the sovereign is supreme only because and so far as its strength is the sum of the forces that are embodied in the individuals who form the community.[1]

Spinoza thus, like Hobbes, derives an omnipotent state from the mere addition of the powers of a number of very far from omnipotent individuals. In Spinoza's theory, however, there is no such attention paid as in Hobbes's to the specific terms on which individuals unite to make the state. The elaborate pains taken by Hobbes to formulate the terms of the contract so as to leave the sovereign absolute have no counterpart in the later philosophy. Spinoza assumes a pact through which the state comes into existence, but apparently attaches no importance to its philosophic character and treats

[1] These ideas are summarized in the *Tractatus Politicus*, cap. i–iii. They are developed fully in the *Tractatus Theologico-Politicus* (1670) and in the *Ethics*. The *Tractatus Politicus* and the *Ethics* were published in 1677, after the death of Spinoza. The *Ethics* had been written many years before, but the *Tractatus Politicus* was in course of preparation when he died.

it as not distinct from any other promise or pledge between man and man. The care which Hobbes took to define the terms of the social contract was due to his desire to give to every act of resistance to the sovereign the stigma of "unjust," which he defined with this end in view. Spinoza avoids the sophistry of the English philosopher, and while agreeing with him in holding that justice and injustice have existence only in the civil, not in the natural state, nevertheless neglects Hobbes's clever distinction between justice and equity and treats these two concepts in the more usual way, as substantially synonymous.[1]

This difference between the two philosophers has a close relation to the far-reaching difference in their views on sovereignty and liberty. The preoccupation of Hobbes was, as we have seen, to establish the absolute and unassailable nature of sovereignty; Spinoza, on the other hand, seeks with the utmost care to secure a field for individual liberty. The scant and rather ridiculous content assigned to individual liberty by Hobbes has been noted above.[2] Spinoza goes so far as to name liberty as the supreme end of the state. He means here, however, merely that the state must promote a rational rather than a bestial life in men, and he has previously defined liberty as consisting in life according to the reason rather than according to the passions. But the

[1] *Ante*, p. 282. Spinoza, *Tractatus Theologico-Politicus*, cap. xvi, sec. 39.

[2] *Ante*, p. 287.

precise scope of the liberty which is essential in the state is arrived at by a strict logical application to sovereignty of Spinoza's philosophical first principles. Like every other form of existence, the state has rights, he argues, to just the extent that it has power, and moreover, its power is exercised always with reference to the primary end of self-preservation. To say, therefore, that the sovereign has absolute and unlimited right, that is, absolute and unlimited power, is absurd; for that would be to include within its rights acts tending to destruction rather than to preservation, and this could only be true in the sense that a man has a right to be crazy.[1] By universal principles of natural right, therefore, the supreme power of a state is limited to a definite range of acts, namely, such as make for the welfare of all its members, such as can actually determine individuals' conduct through appeal to hope and fear,[2] and such as will not arouse anger and resistance in the majority of the subjects.

Of the specific privileges thus left open to individuals even in the civil state, that to which Spinoza devotes most attention is freedom of thought and of expression. His *Theologico-Political Treatise* has for

[1] Id nullo alio sensu poterimus concipere nisi quo quis diceret hominem iure posse insanire et delirare. — *Tractatus Politicus*, III, 8.

[2] There are some things, Spinoza holds, that no man can be made to do by either rewards or penalties; for example, to believe that God does not exist; to be a witness against himself; to torture himself; to kill his parents. An individual who is destitute of hope or fear and cannot be influenced in his conduct by either, is, according to Spinoza, wholly outside of the civil state and in the mere state of nature.—*Tractatus Politicus*, III, 8.

its aim the demonstration that such freedom not only is compatible with the maintenance of religious and political institutions, but is even indispensable to the stability of these institutions. The proof of his thesis from Revelation consists in a very close and learned examination of the Scriptures on lines now familiar as the higher criticism; the proof from reason turns on the full development and application of the principles outlined above. That the individual should give up to the sovereign the control of his *thoughts* is, from the nature of the case, impossible. To confine his *speech* to what the sovereign commands, is hardly more possible; for, Spinoza says, not even the wisest can hold their tongues, and it is a universal vice of men to tell their ideas to others even when silence is needful.[1] Because of this an attempt to exercise an absolute control over expression must inevitably produce dissent and irritation and thus imperil the existence of the state. The sovereign, therefore, by virtue of the primary law of self-preservation, must be denied the possession of any absolute right in this matter. Its power and its right extend only to the prevention of the expression of ideas which endanger directly the existence of the state; that is, those which involve a violation of the social contract.[2] Outside of these, whatever the

[1] . . . nam nec peritissimi, ne dicam plebem, tacere sciunt. Hoc hominum commune vitium est, consilia sua, etsi tacito opus est, aliis credere. — *Tractatus Theologico-Politicus*, xx, 8, 9.

[2] Such, for example, as these: that the sovereign is not supreme; that promises ought not to be kept; that every man ought to live entirely as he pleases.—*Tractatus Theologico-Politicus*, xx, 21.

inconveniences that attach to freedom of thought and expression, whether in reference to secular or in reference to religious matters, such freedom must be left to the individual for the sake of the greater advantage which accrues to the state. It is merely a matter of the choice of evils, and the power and right of the state are determined by the fact that the lesser evil lies in liberty.

There is much in Spinoza's plea for liberty and toleration that suggests the thought of Milton on similar subjects.[1] The distinction that is most obvious between them is that Spinoza looks at the matter from the standpoint of the state, while Milton is chiefly concerned with the individual. To the Jewish philosopher the conclusive argument is that freedom of thought and expression are essential to the preservation and welfare of the commonwealth, while to the Englishman this freedom has for its permanent justification the guarantee it carries of the supreme excellence of the human reason and the dignity of manhood.

The particular forms of government and their respective advantages and disadvantages are the chief subject of Spinoza's *Political Treatise*. In this is fully developed his preference for popular over monarchic institutions. Monarchy, indeed, he proves to be impossible, since no single human being can actually possess and exercise the power implied in sovereignty. What are called monarchies are, he holds, in fact aristocracies. He discusses at length,

[1] *Ante*, p. 245.

however, the best method of organization and action in each of these different forms, with many shrewd observations and ingenious suggestions in reference to practical politics. Throughout his discussion he adheres with the utmost consistency to his fundamental principle that man acts only through self-interest and under the impulse of hope or fear. This gives to his politics a distinctly Machiavellian tone, and, indeed, his admiration for the Italian is unconcealed.[1] His theory as to the organization and operation of aristocracies gives evidence of a thorough familiarity with the institutions of the Netherlands and indicates that he had much in mind the improvement of existing conditions there. For radical democracy he apparently had less sympathy than for aristocracy, though he believed that in democracy, more than in either of the other forms, the supreme power was, in the strict sense, absolute; that is, the rule of a numerical majority, which was the essence of democracy, involved the exercise of a truly overwhelming power, and thus, according to his idea, the possession of unquestionable right. But Spinoza's detailed treatment of democracy is lacking, since death overtook him before his *Political Treatise* was finished.

[1] Despite the very close relation of his general philosophy to that of Hobbes, the latter is barely referred to, in a single note (*Tractatus Theologico-Politicus*, cap. xvi, sec. 34), and in this place an opinion is attributed to the Englishman which is far from anything he ever expressed. Machiavelli, on the other hand, is in a number of places referred to, and always in terms of the highest admiration.

3. *Pufendorf*

Whichever side be taken on the much-mooted question as to whether this prolific and unquestionably talented German philosopher made any distinctly original contribution to political science, there can be no doubt that his works had a wide vogue and much influence with his own and the succeeding generation. Born in the same year with Spinoza and Locke — 1632 — his maturity belonged to the epoch at which the antithesis of the systems of Grotius and Hobbes in social and political philosophy was the most conspicuous fact in intellectual circles where rationalism was dominant. Pufendorf's system reveals most distinctly the influence of his two great predecessors, and in general it may be said to be directed toward a conciliation of their conflicting views. Where his philosophy is concerned with the concepts of ethics, he clearly leans to the principles of Grotius; where he takes up more purely political topics, the Hobbesian doctrine assumes the more conspicuous place. But Pufendorf criticises, selects, rejects and modifies with great energy and acuteness, and his work, *De Iure Naturæ et Gentium*,[1] published first in 1672, presents in clear and coherent form the whole body of social and political thought which had been produced so largely through the stimulus of Grotius and Hobbes.

[1] I have used the Latin edition of Frankfort and Leipzig, 1759, and the English version of Kennett, 4th ed., 1729. An abridgment of the full work was published by Pufendorf under the title *De Officio Hominis et Civis*.

The work is at the same time more comprehensive and more systematic than the *De Iure Belli ac Pacis* or the *Leviathan*, avoiding the tiresome pagan erudition of Grotius and the lengthy Scriptural exegesis of Hobbes. By common consent of those who were later adepts in the system of thought connoted by the term "natural law," Pufendorf was the first to give to it the form and name of a science.[1]

The starting-point of Pufendorf, so far as concerns the social and political elements of his philosophy, is the "state of nature." This term, he holds, may properly be used in either of two senses: first, as designating the residual attributes of the concept "humanity," when abstraction is made of the qualities and conditions which are due to civilization and enlightenment; and second, as designating an actual condition which has prevailed at some time among each of the various races of men, though not necessarily among all at the same time. In either case the state of nature means a condition in which there is no civil or political organization, though in a qualified sense the term may be applied to the relation of families or states that have no common superior.[2] This state of nature in the strict sense is a wretched and intolerable condition; but against the doctrine of Hobbes, Pufendorf holds that the state of nature is characterized not by indiscriminate war but by general peace;[3] for men are rational beings from their creation and

[1] *Cf.* Franck, *Réformateurs et Publicistes, XVII^me siècle*, p. 336; Janet, II, 235.

[2] *De Iure Naturæ et Gentium*, II, ii, 4.

[3] II, ii, 5 *et seq.*

the dictates of reason guide them as well before as after the formation of society and commonwealth. The law of nature, therefore, which means merely the dictates of right reason, prevails in the state of nature and operates to make men refrain from reciprocal injury, respect one another's property, and keep their promises and contracts.

To the detailed exposition of the law of nature Pufendorf devotes an important part of his work. In his definition of the term he follows Grotius: the law of nature is the dictate of right reason determining what is right and wrong in human conduct. But Pufendorf, without fully and frankly adopting the view of Hobbes that self-interest is the working principle of the law in its immediate application, leans, nevertheless, very markedly toward that view.[1] The first law of nature, he declares, as Hobbes had done, is that a pacific and social life must be maintained. The various institutions of civilized society are considered at length and tested in their relation to this fundamental principle. Private property is shown to be necessary to social life and to rest primarily upon a virtual contract between the holder and the rest of the community;[2] polygamy is considered doubtful from the point of view of the law of nature, though its tendency to produce a burdensome proletariat condemns it on the ground of expediency, if not on the ground of abstract right;[3] slavery, explained as based on contract, is held to be in accord with natural law, and

[1] *Cf.* II, iii, 16 and 17. [2] IV, iv. [3] VI, i, 17 and 19.

to be on the whole desirable, since it also, like monogamy, operates to reduce the number of idle men — thieves, vagabonds and sturdy beggars.[1] Throughout his detailed exposition of the law of nature, Pufendorf in general follows very closely the lines of Grotius's doctrine, but at one point of fundamental importance he abandons entirely the elaborately developed theory of the Dutch philosopher and puts himself on Hobbesian ground. This point is the distinction between the *ius naturæ* and the *ius gentium*. Pufendorf rejects the idea of a law of nations consisting in the practices of all or the best nations and deriving thence a binding force for mankind, and adopts substantially the dictum of Hobbes, that "the law of nature and the law of nations is the same thing."[2]

The life in a state of nature according to natural law, as conceived by Pufendorf, would appear to be adequate to all the needs of humanity and to leave no reason for social and political institutions. But unfortunately the majority of men tend to live by impulse rather than by reason and the laws of nature are respected in their true spirit by few. Hence for the majority of men, though not for the few, the transition to the civil state becomes necessary.[3] As Luther and Melanchthon had explained that the

[1] Pufendorf says that the absence of slavery among Christian nations must be regarded as one of the causes "quare tanta colluvies furum, vagabundorum et validorum mendicorum passim occurrat." And he approves of workhouses — "ergastula, in quibus ignavis nebulonibus laborandi necessitas afferetur." — VII, i, 4.

[2] II, iii, 23.

[3] VII, i, 7, 11.

commonwealth, with its coercive function, was essential not on account of true Christians, but on account of those who lacked the Christian character, so Pufendorf explains it as essential, not for philosophers who, like himself presumably, could live a purely rational life, but for the rabble of inferior folk. His exposition of the unpleasant consequences of the selfish propensities of most men in the state of nature runs pretty close to the chief features of Hobbes's *bellum omnium contra omnes*, despite Pufendorf's earlier insistence that the characteristic of that state is peace rather than war.[1] The desire to escape the evils of this condition is the immediate motive for the formation of the commonwealth, and the only possible means to effect this transition is, Pufendorf holds, by contract.

The treatment of the procedure through which the transition from the state of nature to the civil state is effected, is one of the best parts of Pufendorf's philosophy. It particularly illustrates his inclination to effect a conciliation of Grotius and Hobbes. He makes explicit what we have seen was implied, though not expressed, by Grotius, that the social instinct in man is to be held accountable for the formation of society, while a deliberate act of will through contract must explain the origin of the state.[2] The social instinct may be satisfied by the "primary societies" — family, religious bodies, commercial organizations,

[1] Compare VII, i, 7 with II, ii, 9.

[2] *Ante*, p. 180. See Pufendorf, VII, i, 3: "Ex adpetitu societatis non statim sequitur adpetitus civitatis."

etc.; but for the formation of a civil society or a commonwealth there must be a union of wills effected through contract. Moreover, Pufendorf holds that a twofold contract is necessary. Both the social contract which Hobbes had described and the governmental contract which had been the foundation of all the anti-monarchic theories, are essential to the complete philosophy of the origin of commonwealths. The process as he explains it is this[1]: first each individual contracts with each to form a lasting society and to determine by majority vote what arrangements shall be made for the common safety and welfare. Then a vote is taken as to what form of government shall be adopted, and those who have joined the society conditionally on the adoption of a particular form are at liberty to withdraw if their preference is not actually carried into effect. Finally, a second contract is made between the designated bearers of governmental power on the one hand, and the rest of the community on the other, — the former agreeing to promote the common welfare and the latter to yield faithful obedience. This process is held by Pufendorf to be not only a logical conception that is indispensable to the philosophical theory of political institutions, but also a very probable conjecture as to the actual fact in the history of political societies.

As to the nature and attributes of the sovereignty which is created by these contracts,[2] Pufendorf follows Grotius and not Hobbes. As against the latter he insists that the sovereign is supreme (*summus*) but

[1] VII, ii, 7. [2] VII, vi.

not absolute (*absolutus*). Limitation is entirely compatible with the conception of sovereignty. The laws of God and of nature are always operative to restrict the exercise of power; custom and ancient usage determine practically the methods of sovereign action; the existence of a parliament by the side of a monarch, with the right of participation in legislation, does not detract from the sovereignty of the monarch. Sovereignty is, in short, restricted by the end for which it was conferred by the original contract; for this end was the common welfare of the parties to the pact, and only such powers are ascribable to the sovereign as contribute to this end. What means are requisite to this end at any given time and place, must indeed be decided by the sovereign; but his choice is limited to such means as would be judged suitable and proper by a sane man (*per sanum hominem*), and such as are conformable to the law of nature.

Pufendorf's sovereignty becomes thus in the last analysis as indistinct and elusive a concept as that of Grotius. To the philosopher possessed with the idea that there is a standard of conduct for both commonwealths and individuals in a natural law, whose content is discernible by only the most enlightened intellects, the Hobbesian dogma of absolute sovereignty is impossible of acceptance. The "sane man" whose judgment Pufendorf sets up as the test for the propriety of sovereign actions means really the philosopher himself and other writers on the law of nature who agree with him. Hobbes alone of the seventeenth-century thinkers was able to make the full and frank

concession that the political sovereign was a law unto itself and was independent, theoretically as well as practically, of the judgment of the learned world.

But whether sustaining the Hobbesian or the Grotian thesis on any particular point, Pufendorf in his general spirit is clearly enough a representative of the rationalizing school of political philosophy, which holds that the source and criterion of political authority must be looked for and detected among men and must not be referred blindly and mystically to Divinity. He devotes much attention to pointing out the defects of the obscurantist doctrine which was prevalent among the mediocre theologians of the day. The most conspicuous exponent of the ideas which pervaded such circles was Bossuet, the Bishop of Meaux, in France. Through him the dogma of a peculiar sanctity pertaining to sovereign monarchs and emanating from God himself was put in the most effective form and the form which made the best appeal possible to the thought of the time. To this sort of doctrine, therefore, we must next devote our attention.

4. *Bossuet*

Commanded by Louis XIV to undertake the education of the Dauphin, this bishop-courtier embodied what he conceived to be the proper political system for the use of his pupil in a work entitled *Politics as derived from the very Words of the Holy Scriptures.*[1] That the doctrines of this work expressed

[1] *La Politique tirée des propres paroles de l'Écriture sainte.*

the mature judgment of the writer seems doubtful;[1] but there is no doubt that they were in exact accord with the spirit in which the *grand monarque* administered his government and regulated the conduct and the expressions of his court and his subjects in general. Bossuet becomes by virtue of this work the chief exponent of the theory of absolute monarchy by divine right. His literary genius, even more than his exalted social position, won for him an influence far above that of any of the obscure theologians who tediously propounded much the same doctrine, and entitled him to rank as superior even to Sir Robert Filmer, whose logic is, on the whole, rather better than Bossuet's.

In the *Politics as derived from the Scriptures* the method is simply that of fortifying every principle asserted by quotations from the Bible. It is the method familiar to us from our study of mediæval theories; but Bossuet exhibits nothing of the mediæval formalism and terminology and adopts the manner and the categories of contemporary rationalistic philosophers. There is indeed a frequent recourse to Hobbesian dogmas that proves the author's susceptibility to the currents of his environment; but the Hobbesian supports for the dogmas are of course very rarely adopted.[2] Whatever we may think at

[1] This point is ably discussed in Franck's brilliant essay on Bossuet in *Réformateurs et Publicistes*, pp. 430 *et seq.*, esp. pp. 455–456.

[2] That Hobbes's philosophy had followers in France during the reign of Louis XIV is evident from the translations that were made in that period. See "Les traductions françaises de Hobbes sous le règne de Louis XIV," in *Archiv für Geschichte der Philosophie*, Berlin, 1899.

times of the aptness of the texts which Bossuet brings to the support of his principles, no one can fail to be impressed by the ingenuity with which some text is invariably discovered that is adapted to the purpose in hand.

The fundamental principles of Bossuet's philosophy are the familiar dogmas that man is by nature sociable, that the evil passions of men render social life impossible without regulation, and that government, therefore, is necessary. In a number of places it seems to be intimated that governmental power is conferred upon the sovereign by transfer from the individual — that the individual gives up his natural right to the holder of governmental power;[1] but these appear to be mere slips of the author, illustrating a tendency toward undue rationalizing. It is indeed true as a general proposition that Bossuet is but moderately clear and consistent in his fundamental dogmas about society, government and law. He becomes entirely clear in the second book, "On Authority." Under God, he holds, monarchy is the most usual and most ancient, and therefore the most natural form of government. It is modelled on the paternal government, which is itself an institute of nature pure and simple.[2] Monarchic government is not only the most natural, it is the strongest and therefore the best; and hereditary monarchy is the best of all.

[1] *Cf.* Book I, chap. iii, prop. 5.

[2] "All men are born subjects, and the paternal rule which accustoms them to obey accustoms them at the same time to have a single ruler." — II, i, 7.

The demonstration of the foregoing from the Bible is fairly easy, but the task becomes void of all difficulty when the essential characteristics of royalty are to be established.[1] The authority of a king is declared to be sacred, paternal, absolute and subject to reason. The sanctity of royal authority, attested in the unction by the priests of God, makes it sacrilege to assail the person of the king. His paternal character requires him to provide for the welfare of his people as a father does for his children. That the authority of the king is absolute does not imply, Bossuet carefully maintains, that it is arbitrary. The two ideas must not be confounded.[2] While the prince is not obliged to render account of his conduct to anybody and while no one has coercive power over the prince, nevertheless he is bound to conform to the laws. The obligation has no sanction; but the obligation of the people to obey the king has a sanction. "The people must fear the prince, but if the prince fears the people all is lost."[3] What is essential in a monarch is reason, and it is the bestowal of this upon him by God that constitutes the most important characteristic of royal authority. The king is in fact an image of the majesty of God himself. It is wholly wrong to look upon the king as a mere man. He is a public person and in him the whole people is embodied. "As in God are united all

[1] Books III–V.

[2] Pour rendre ce terme odieux et insupportable plusiers affectent de confondre le gouvernement absolu et le gouvernement arbitraire. Mais il n'y a rien de plus distingué. — IV, i.

[3] IV, i, 6.

perfection and every virtue, so all the power of all the individuals in a community is united in the person of the prince."[1] So sublime is the majesty of a prince that it can be due to no human source; it can come, and it does come, only from God.

In view of such rhapsodical glorification of royal authority it is not surprising that Louis XIV heartily approved of Bossuet and his teachings. The writer's tendency to lapse into rationalistic dogmas was easily overlooked in the contemplation of this apotheosis of the king. That the monarch has duties toward his subjects and toward God is indeed set forth at length in the work:[2] he must maintain religion and must maintain justice. Religion, whether true or false, is essential, Bossuet contends, in social life; it is the duty of a monarch, however, to exterminate the false religions if he is able; but a false religion is better than none.[3]

In the presence of such a conception of royal authority there remains, of course, no room whatever for anything but absolute submission on the part of subjects. Open impiety on the part of a prince — even persecution of the adherents of the true religion — does not exempt the subjects from the obedience which they owe to him. To violent or

[1] "Consider a great people united in a single person; consider that power sacred, paternal, absolute; consider the secret reason which controls the whole body of the state enclosed within a single man; thus you see the image of God in the king and you have the idea of royal majesty." — V, iv, 1.

[2] Book VII: "Of the Various Duties of Royalty."

[3] VII, ii, 3 and iii, 9.

arbitrary acts by a ruler, subjects may indeed oppose "respectful protests," but faultfinding or open mutiny is no privilege of theirs, and their extremest recourse must be prayers for the conversion of the offender. Bossuet finds much difficulty in reconciling this doctrine with two particular episodes of Biblical history, namely, the conduct of David and the conduct of the Maccabees; but he is able, by rather refined methods of interpretation, to reach the conclusion that there is not to be found in these incidents a precedent for revolt on the part of any other subjects.

Bossuet's justification and glorification of the absolute French monarch were accompanied and supplemented by a passionate devotion to the cause of the national French church as against the claims of the Roman See. Louis XIV, in enforcing his claim to supremacy in all departments of French life, came into rude conflict with the Pope in ecclesiastical matters, and Bossuet shone above all the rest of the clergy in the energy and effectiveness with which the independence of the Gallican church was asserted and maintained. That this independence meant independence of the Pope, but subjection to the King, was an obvious incident of the situation. But this was accepted without qualification by Bossuet; for in France as in England the indivisible union of church and crown was an instinctive as well as a rational corollary of the doctrine of monarchy by divine right.

5. *Minor Currents in Continental Theory*

In the copious literature of the age with which we are concerned the doctrines represented by the philosophers just considered found frequent expression in various forms. Spinoza's theory received indeed but little attention; the systems presented by Pufendorf and Bossuet, however, were the subject of treatment by numerous other writers. The theory of natural law was examined in various aspects by the great Leibnitz, who strongly dissented from the particular development given to it by Pufendorf; but the interest and speculation of Leibnitz were centred mostly about the relations of natural law to theology, and his effort was to check the separation of the two which was effected by the extreme rationalizing philosophers.[1] Christian Thomasius, a pupil of Pufendorf, followed very closely in the footsteps of his master and stoutly maintained, against the influence of Leibnitz, the conception of a body of dogma resting on human reason alone, independent of theology and furnishing a final unquestionable norm for social and political institutions. But Thomasius, while reckoned one of the chiefs of the rationalistic school in its strife with the theologians, made no contributions to the theory of politics proper.

The doctrine of monarchy by divine right, on the other hand, found in addition to Bossuet an ardent and

[1] See Bluntschli, *Geschichte*, pp. 173 *et seq.* For the scattered ideas of Leibnitz on strictly political subjects, see Janet, *Histoire*, II, 245.

aggressive defender in the German Horn, who, if less conspicuous and influential, was in no degree less logical than the great French bishop.[1] With more preciseness than Bossuet, Horn ascribes to the sovereignty possessed by a monarch a divine source and character and contends that while conceivably a mass of human beings may designate a particular person to receive the mystic attribute of majesty, the actual bestowal must come from God, in whom alone that supreme quality can be conceived to exist. The Hobbesian notion that the sovereign power of a king is derived from a group of feeble human beings, Horn regards as no less destructive of all social order than the doctrines of the monarchomachs themselves.

During the later years of the reign of Louis XIV, when the long wars and the vast extravagance which had attended the full development of that monarch's policy were producing their natural economic effects in France, there appeared some indications of a reaction from the obscurantist absolutism of the prevailing philosophy. Fénelon, the associate, rival and victim of Bossuet, breathed into his very popular literary works a spirit suggesting doubts as to the probability that any human being, however divinely endowed with majesty, could so direct the life of a great people as to satisfy the requirements of human-

[1] Johann Friedrich Horn, *Politicorum Pars Architectonica de Civitate* (1664). See Gierke, *Althusius*, pp. 70 *et seq.* Pufendorf directed a vigorous polemic against Horn's theory of sovereignty; see the *De Iure Naturæ et Gentium*, VII, iii, 3.

ity.[1] Vauban, after contributing very much to the military glory of the king by his engineering genius, turned in his latter days to the contemplation of the misery which afflicted the subjects of the *grand monarque*, and proposed a readjustment of taxation in the interest, not of the state — that is, the king and his court — but of the people.[2] Boisguilbert, another official of the administration, set forth in statistical form the evil condition of the finances, with criticisms that reflected rather seriously on the claim of the sovereign to godlike wisdom. But none of these deviations from the normal tone of political thought was of noteworthy significance. The philosophers who published the liberalizing works were visited with the displeasure of the court and they found no followers and no imitators. Neither in France nor anywhere on the Continent was there during the latter half of the reign of Louis XIV any influential and authoritative discussion of political doctrines save on the lines of a pretty complete justification of absolute monarchy as the most desirable form of government. Far other, however, was the situation in the British Isles. Here had been carried on a spirited debate covering the whole ground of fundamental political theory, with the doctrines of monarchic and popular sovereignty in the centre of the field, and here had been carried on in the world of objective fact the dethronement of a king and the

[1] In the famous *Télémaque* and other works. See Janet, *Fénelon*, chap. viii; also *Histoire de la Science Politique*, II, 291 *et seq.*

[2] *La Dîme Royale*, pub. in 1707.

establishment of a new system of government. It is to Great Britain, therefore, and to the incidents connected with the Revolution of 1688 that we must turn in order to follow the main current of speculation on politics.

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CHAPTER X

JOHN LOCKE

1. *Practical Politics of the English Revolution*

THE restoration of the Stuarts to the throne of England in 1660 signified the failure of the Puritan Parliamentary party as a party of construction; but it did not signify the disappearance of the ideas, either theoretical or practical, upon which the movements of the preceding two decades had been based. After the first surge of violent reaction had exhausted its force, the ancient friction between crown and Parliament, between law and prerogative, assumed once more the first place in the general political situation, and with it was renewed the strife between the established church and the nonconforming sects. Charles II, by becoming the shameless dependant of Louis XIV, succeeded in evading the direct issue with Parliament over taxation upon which his father had lost the throne; but James II, less ignoble, if also less shrewd than his brother, precipitated the revolution upon the religious and ecclesiastical issue.

The cardinal fact in the adjustment which settled the restored king firmly upon his throne was the strict alliance of the established church with the crown. Both institutions had suffered the last degree

of indignity at the hands of the Puritans, and a union for security against the recurrence of such an experience was instinctive. Hence, at every manifestation of a tendency in Parliament toward limitation of the royal authority, the king could count on the blind and unwavering support of the bishops in the House of Lords and of the lower clergy in the constituencies of the Commons, with the doctrine of divine right and passive obedience as the foundation of all relations between monarch and subject. The reign of Charles II was indeed the culminating point of this doctrine in England. Not in the rationalistic form in which Hobbes had displayed it, but in the full obscurantist spirit that characterized the days of Laud, and that characterized contemporary thought at the court of Louis XIV, the duty of unresisting submission to the Lord's Anointed was kept before the English people in copious floods of sacerdotal literature. Every effort of that party in Parliament which was coming to be known as the Whigs, to liberalize the existing institutions of either state or church, was met by the obstinate resistance of the ecclesiastics. The University of Oxford, the historic home of extreme royalism, formulated in convocation in 1683 a condemnation of "certain pernicious books and damnable doctrines destructive to the sacred persons of princes, their state and government, and of all human society," and from this document may be readily gathered the substance of the Tory creed of the day.[1] Among the doctrines thus condemned were that of the origin

[1] For the text see Cooke, *History of Party*, Vol. I, p. 346.

of civil government in popular contract of any sort; every aspect of the right of resistance to a king, whether he violated the laws of God, the laws of the land, or any other prescription; and Hobbes's whole doctrine of the state of nature and the origin of government in self-interest of the individual. It was in connection with the sharp conflict of parties in the latter days of Charles II that Sir Robert Filmer's *Patriarcha*[1] was published in 1680, and the popularity which it obtained is convincing evidence that the doctrines which it embodied were the dominant doctrines in the English people of the day. Until the death of Charles II the alliance of church and crown stood firm despite the strain often put upon it by the Catholicizing tendency of the king. Only because James II deliberately disrupted this alliance and alienated the church from his cause, did the Revolution of 1688 become possible.

The chief bond which united the church to the king at the Restoration was, as has been said above, a common fear and hatred of the Puritan dissenters of all shades who had been responsible for the destruction of the old royal and ecclesiastical order. Of almost equal importance in the view of the church, but far less important to the mind of the king, was the ancient danger from the Catholics. The stringent legislation which was enacted against nonconformity was aimed by the ecclesiastics against Protestants and Catholics alike, but its administration was tempered by the king to the Catholics particularly. Gradually,

[1] *Supra*, p. 255.

as time passed on, the Protestant dissenters, proving themselves entirely peaceable and embracing notoriously a very large element of useful and prosperous citizens, ceased to excite so strong feelings of fear and hatred in the church party; and on the other hand, the obvious inclination of the king to tenderness toward the Catholics made the latter the chief object of dread. The solution which was proposed by the liberal spirits of the opposition party for the complex relations of the various sects was a general toleration of religious belief. This it was claimed was the only possible method by which peace and order could be permanently insured without loss of valuable strength to the nation. The church party was disposed to some measure of toleration of Protestant dissenters, but feared any concession to Catholics; and the king, lukewarm toward any relief for the Protestants, was willing to go far in indulgence to the Catholics. Through this play of cross purposes toleration utterly failed in Parliament, but the king through his executive discretion was able to ease greatly the burdens of those whom he especially favoured.

James II, ascending the throne an avowed Catholic, assumed an aggressive attitude of tolerance for all Protestant sects, endeavouring to win the Protestant dissenters to his support in a policy which was clearly seen to be designed particularly for the benefit of the Catholics. The unnatural alliance which he aimed at was very quickly shown to be impossible. Much as churchmen and dissenters disliked each other, the feeling was affection itself in comparison with the

hatred with which each regarded the Catholics. James, forging recklessly ahead in his blundering way, pushed to its limit the claim that for the benefit of his realm his prerogative could supersede established law. This old issue, on which substantially Charles I had lost his throne and his life, roused to full intensity the spirit of opposition among the maintainers of the Parliamentary tradition, now to be found chiefly in the Whig faction and to a considerable extent among the dissenters. But the opposition might still have been ineffective had not the church party, in terror of a Catholic régime, dropped their doctrine of passive obedience and joined in resistance, in some cases passive and in some cases active. This change produced that unity in the nation which caused the flight of the king and the accession to power of William and Mary.

Both in the process through which the crown was actually transferred from the old to the new wearers, and in the legislation through which the process was validated, the triumph of the Parliamentary over the royalist principle in the long controversy was made perfectly evident. An irregularly constituted but clearly representative convention of leading politicians transacted the business through which the Prince of Orange and his wife were seated upon the throne, and this same convention, assuming the name and functions of Parliament, enacted the laws which in most explicit terms set limits to the royal power. By the Bill of Rights the power to suspend or dispense with the execution of the laws and the power

to levy money without Parliamentary vote were declared illegal, and a number of rights which had been claimed for citizens against the crown by the Whig opposition, were formally guaranteed. The statute, moreover, declared William and Mary to be the holders of the royal power, and thus made their title formally a Parliamentary title; and if not in words, at least by unquestionable implication, their tenure of the throne was made conditional on the maintenance of those rights and liberties which the act defined. On the other hand, the principle of toleration not only was not recognized, but was flatly repudiated by a series of most ingeniously oppressive acts against Catholics. For Protestant dissenters, however, some slight tendency to concession was manifested, and thus freedom of conscience, for Protestants at least, secured a precarious foothold in the law of the land.

2. *Relation of Locke to Contemporary Theory and Practice*

With the Restoration of 1660 the crude and fantastic social and political doctrines which had been preached during the Commonwealth by the Levellers disappeared from the literature and in great measure from the thought of the time. Under the new conditions only the defenders of monarchic divine right were privileged to indulge in absurd and irrational dogmatizing. The religious sects whose creeds had been both the strength and the weakness of the Commonwealth settled down under the persecution

of the triumphant Anglican establishment into peaceful communities of worshippers, with no more desire than opportunity to assert any principle of political theory. Independents, Baptists and Quakers, as well as the more aristocratically disposed Presbyterians, manifested little or no interest in any phase of politics, save the possibility of some measure of toleration for their cherished creeds. After certain well-intended efforts of liberal-minded Anglicans to bring the less extreme dissenters again within the church had proved futile, the idea gained headway among the nonconformists that a general freedom of conscience would be the only solution of the existing difficulties. William Penn deliberately adopted the principle in its most advanced form in his government of Pennsylvania; and the proprietors of South Carolina, some years before Penn's action, included a modified form of the principle in the frame of government constructed for their province.[1] That Locke himself framed the Carolina constitution is sufficient indication of his entire sympathy with the movement toward toleration. Though steadfast in the communion of the established church, his philosophy placed him always with those who held religious belief to be no rightful subject for governmental supervision.

While freedom of conscience, thus, which had been, as we have seen, a prominent feature of political theory in the days of the Commonwealth, continued to play a rôle among conservative thinking

[1] *Fundamental Constitutions*, secs. 97–110.

men, the most distinctive dogma of the Commonwealth period, that republican was preferable to monarchic government, found practically no expression after the Restoration save among the more wild and lawless spirits who were concerned in the intrigues that centred about the Rye House Plot.[1] The opposition to the last two Stuart kings and their policy was led by men of rank and property, from the higher social strata, and destitute of all sympathy with the aims and methods of the Levellers, or even of the moderate Republicans. They held in general to the idea of popular sovereignty as distinct from monarchy by divine right, but in respect to the form of government, their purpose was to restrict the monarch rather than to do away with him. A limited monarchy rather than a Commonwealth was their ideal; they were not Republicans, but, in the sense that history has attached to the name, they were Whigs. It is this class which the philosophy of Locke preëminently represents. He cast their ideas in the mould of well-rounded theory, while they themselves, for the most part, guided their policy from day to day by the requirements of fluctuating expediency.

Among the opponents of the royal power in the later days of Charles II, when party feeling ran highest, one of the most scholarly and philosophical in temperament was Algernon Sydney, who was executed for treason in 1683. His *Discourses concern-*

[1] For a good sketch of the thought of this period, see Gooch, *English Democratic Ideas in the Seventeenth Century*, chap. x.

ing Government, published after the Revolution of 1688, embodied an elaborate attack on the doctrines of the court party. His text was Filmer's *Patriarcha*, which he subjected to a refutation, step by step. The form which his work takes in consequence of this method leaves his constructive theory very vague and uncertain. He has generally been described as a "republican," but there is hardly more reason to apply that term to him than to Locke. What appears entirely clear is his doctrine that government is an institution created by men for their own security and interest and that it rests upon no prescription of either God or nature save in the sense that such prescriptions are involved in the conclusions of human reason. Authority rests on consent, and the holder of authority over men has no basis for the exercise of his power save the agreement of the subjects for their own ends to respect it. Sovereignty, therefore, is indefeasibly in the people, Sydney holds; and the administration of government, whether in the hands of a monarch or of any group of men, is subject to an overruling popular control. That the monarchic form of government is, on the whole, not adapted to secure the ends for which authority is instituted, is clearly enough Sydney's opinion; but on the other hand, his dislike for democratic government is no less clear. His preference is obviously for aristocracy, and this is in line with the whole spirit of his thought, which is saturated with the influence of classical antiquity. His *Discourses* display an enormous amount of historical erudition,

with special predilection for the Roman Commonwealth, and at many points both the substance and the method of his thought closely parallel Machiavelli's *Discorsi*.[1] Sydney is, however, distinctly less broad in his philosophy than the Italian, and in this respect is far behind Locke also, with whose specific doctrines he is often in substantial accord.

Locke, born in 1632, was the son of a Puritan soldier, received his education when the schools and universities were under Puritan influence, and became closely associated in early manhood with that brilliant and liberal-minded, if unscrupulous and erratic, Earl of Shaftesbury who was the founder of the Whig party. All these circumstances combined with his temperament to make Locke alien to the controlling ecclesiastical and political forces during the last Stuart reigns. At the same time he had no sympathy with the extremist doctrines and tendencies among the Whigs. Late in the reign of Charles II, however, he fell under suspicion and was obliged to seek safety in Holland, where he remained until the expulsion of James II. Returning then to England, he published for the first time the works on which his philosophical fame rests. His *Two Treatises of Government* embodied in purely scientific form the justification of the Revolution. The *Letter concerning Toleration* set forth a theory of the particular relations between church and state which Locke

[1] *Cf.* Sydney's *Discourses*, chap. ii, secs. 22–23. He argues that the city, like the child, must not remain in its original weakness. "If it do not grow it must pine and perish; for in this world nothing is permanent: that which does not grow good will grow worse."

conceived to be sound, though it was one which the existing conditions did not permit to be adopted by the triumphant Revolutionary party. Of his *Two Treatises of Government*, the first follows precisely the method of Sydney in refuting step by step the arguments of Filmer's *Patriarcha;* the second goes far in advance of Sydney by presenting a systematic, constructive theory of state and government. Although there is in Locke's theory but little that had not long been current coin in political philosophy, the form and spirit in which it is presented and the far-reaching influence which it exerted must justify a somewhat careful analysis of his work.

3. *The State of Nature and Natural Rights*

In explaining the origin of political authority, Locke adopts the same individualistic point of view that Hobbes had taken, and starts with the conception of a state of nature; but it is not the original Hobbesian doctrine so much as Pufendorf's modification of it that is presented by the Whig philosopher. The state of nature as conceived by Locke is a pre-political rather than a pre-social condition. It is not a state in which men live in brutish reciprocal hostility, but one in which peace and reason prevail. It is not a lawless state. Rejecting the incisive distinction made by Hobbes between the law of nature and real law, Locke follows the Grotian doctrine and declares the law of nature to be a determining body of rules for the conduct of men in their natural condition. Under this law, of which reason is the interpreter, equality

is the fundamental fact in men's relations to one another. On this foundation Locke constructs his doctrine as to the natural rights which belong to every man in the pre-political state, and explains why this state is unsatisfactory.

These natural rights are summed up under the formula which, as we have seen, had become common during the Puritan Revolution, *i.e.* life, liberty and property.[1] The preservation of life is the most primary motive of human action, and whatever is reasonably directed to this end is every man's privilege by the law of nature. Locke does not differ from Hobbes on this point. As to liberty, on the other hand, Locke departs from his predecessor and defines it as exemption, not from every rule save the individual's arbitrary caprice, but from every rule save the law of nature. This law is conceived, thus, not as a limitation upon human freedom, but as an essential concomitant of it; and slavery, in the full sense of the word, is merely the condition of one who, by violating the law of nature, has withdrawn himself from its protection; that is, one who has been made captive in a just war.[2] Property right under

[1] By broader generalization Locke seeks to group all three of these terms under the single concept of "property." See *Treatises of Government*, II, sec. 87: "Man . . . hath by nature a power . . . to preserve his property — that is, his life, liberty and estate . . ." *Cf.* sec. 123. On the other hand the phrase is sometimes expanded to include "health": *e.g.* "life, liberty, health and indolency of body and the possession of outward things." — *Letter concerning Toleration;* also *Treatises*, II, sec. 6.

[2] Locke does not recognize any validity to the contract theory of slavery. One who is in the absolute power of another man cannot, in the philosopher's opinion, make a contract. *Ibid.*, secs. 22–24 and 172.

the law of nature includes control over all extraneous objects through which the maintenance of life may be promoted. Locke sets forth in a long chapter[1] his famous theory as to the rational basis of private ownership. The essence of his doctrine is that while primarily all things are common to all men, as soon as any individual has incorporated his labour in any particular object he has made it his particular property.[2]

The state of nature, then, is conceived by Locke as characterized by the consciousness of and respect for those natural rights which are the substantial elements of the law of nature. It is by no means to be identified with the state of war, as had been done by Hobbes. This latter state means simply the condition that exists when men have from any motive abandoned the prescriptions of reason and resorted to violence. The state of war may exist as well in civil society as in the natural state of man, and it does appear whenever attempts are made upon one's life, liberty or property by force. But the state of nature and the civil state are differentiated by a single clear test. In the former there is not, and in

[1] *Treatises*, II, chap. v.

[2] "Although the earth and all inferior creatures be common to all men, yet every man has a 'property' in his own 'person.' This nobody has any right to but himself. The labour of his body and the 'work' of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men."—*Ibid.*, sec. 27.

the latter there is, a common organ for the interpretation and execution of the law of nature. Though this law be implanted in the hearts and minds of all men, yet differences of intelligence and conflicts of interest will cause disputes even among those most bent on submission to nature's rule. Every individual is vested originally with the full right to execute the mandates of this law. Each may justly slay the unjust slayer, or visit justice upon the kidnapper or the thief. But variety in manner and method of the enforcement of justice inevitably cause confusion and uncertainty in life, and there is need of a known and certain rule in accordance with which the rights of individuals are to be protected and maintained. It is to secure such a rule that civil society is instituted.

Locke's state of nature, then, like Milton's,[1] means nothing more than the relation which exists among men who have no common political superior. Independent sovereigns illustrate this state; a Swiss and a Frenchman meeting each other in the woods of America illustrate it; and it is illustrated again by an absolute monarch and his so-called subjects, since, Locke points out, there exists no common authority for determining the application of the law of nature as between them. Although this conception differs fundamentally from that of Hobbes, and though Locke at first rejects entirely the notion of the war of each against all, yet he in the end concedes that, owing to the weakness and viciousness of the majority

[1] *Supra*, p. 242.

of men, the natural state is intolerable.[1] Thus he comes to the process through which the evils are escaped by the substitution of civil for natural society.

4. *The Social Contract*

Locke's form of the contract through which civil society is created coincides with the first of the two stages which Pufendorf finds in the institution of the state.[2] Each individual contracts with each to unite into and constitute a community. The end for which this agreement is made is the protection and preservation of property, in the broad sense of the word, — that is, life, liberty and estate, — against dangers both from within and without the community. The contract involves an agreement by each of the individuals to give up his natural right of executing the law of nature and punishing offences against that law: not all his natural rights, as some have held, but merely this single one is resigned. Moreover, the right given up is given up not to any particular person or group of persons, but to the community as a whole. The society thus becomes, by the act of the individuals who form it, vested with the functions of determining what are offences against the law of nature, and punishing violations of that law, — and those functions constitute, in Locke's view, the whole scope of political authority. There is in this conception nothing of that absolute, unlimited and uncontrollable sovereignty which was the soul of Hobbes's

[1] *Treatises*, II, chap. ix *passim*.

[2] *Supra*, p. 323.

system. The natural rights of the individual limit the just power of the sovereign community precisely as they limited, in the state of nature, the just power of other individuals.

Two corollaries are deduced by Locke from the idea that civil society originates as above: First, the right of majority rule as the principle of the community's action. That the will of the majority must bind the minority he regards as demonstrable both on the ground of sheer necessity, since without such rule corporate action would be impossible,[1] and on the ground of contract, the agreement to submit to the will of the majority being an element in the social pact. The second corollary is, that the commonwealth is authorized by the individual to employ his force in executing its judgment as to the rights involved in the law of nature. That is to say, the individual has bound himself to contribute his force to carry out the decisions of the political authority which he has constituted.[2]

The origin of political societies through more or less formal contract, Locke is inclined to consider an historical as well as a logical fact. The evils

[1] The difficulty of the question seems to have interfered seriously with Locke's lucidity of expression in explaining this point: "For that which acts any community being only the consent of the individuals of it, and it being necessary to that which is one body to move one way; it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority: or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should; and so every one is bound by that consent to be concluded by the majority."— *Treatises*, II, sec. 96.

[2] *Ibid.*, sec. 88.

attending the natural state became obvious, he argues, very early in the life of the race, and the union of men into political organizations by general consent took place before the invention of means for perpetuating the record of the fact. To conclude that the state of nature and the pact of society had no existence, from the mere fact that no account of these phenomena is preserved, would be logically no more sound than to conclude that the soldiers of Xerxes were never children because we have no record of their childhood.[1] So far as historical accounts of the origin of commonwealths exist, they support, Locke maintains, the theory of contract. Rome, Venice and Sparta are fair illustrations of this, and the American Indians afford additional confirmation so far as existence in a non-political condition is concerned. The monarchies which history shows to be so characteristic of primitive times are, according to Locke, merely expressions of the importance of military leadership in those times, and signify nothing as to the origin of the communities. Even the early patriarchal governments furnish so many instances of deviation from the strict hereditary succession, that choice must have entered into the installation of rulers, and thus the agreement of the people must have come into play.

From the point of view of the individual, consent

[1] "It is with commonwealths as with particular persons. They are commonly ignorant of their own births and infancies; and if they know anything of it they are beholden for it to the accidental records that others have kept of it." — *Ibid.*, sec. 101.

to membership in any political community may be, Locke holds, either express or tacit. The tacit consent is given by the mere act of remaining personally in the community or of holding property therein. One who unites with a society in this manner may by ceasing his connection with the community tacitly withdraw his tacitly given consent to fellowship with it; but one who has by express declaration given his consent to be a member of the commonwealth, "is perpetually and indispensably obliged to be and remain unalterably a subject to it and can never be again in the liberty of the state of nature unless by any calamity the government he was under comes to be dissolved."[1]

On the whole, Locke's doctrine as to the social contract embodies in its essential features nothing that had not been worked out by preceding philosophers. It does, however, give to the conception a high degree of definiteness and moreover brings into peculiar prominence its individualistic implications. Where Hobbes and Pufendorf had analyzed the formula of political union in order to make governmental authority absolute, Locke laboured primarily to establish its limitations. Of this difference there is impressive evidence in the fact that the conception of sovereignty, which the earlier writers were at such great pains to elucidate, received only the most casual notice in his constructive treatise. The term itself he does not use at all, and the idea of unrestricted power in any human hands finds no place in

[1] *Treatises*, II, sec. 121.

his theory.[1] So far as sovereignty is predicated by Locke, in fact, if not in name, of any political entity, it is ascribed to the collective body which is created by the social pact. Not as a part of the machinery of government, but as that which underlies government and becomes active only when government is dissolved, the "community" is held to be always the supreme power; and in last instance it is the "public will of the society" to which alone the members owe obedience. "The essence and union of society" consist, Locke holds, in "having one will";[2] and supremacy, therefore, belongs to that which is in the fullest sense the embodiment of this will. In a less complete sense the organ for the expression of the will, namely, the legislative branch of the government, he also designates as "supreme."

Having accounted sufficiently for the sovereignty in the process through which political society comes into existence, Locke proceeds to the discussion of the institutions through which the ends of political society are actually attained — the institutions, that is, of the government as distinct from the state. Though philosophizing always with pretty obvious reference to the conditions in England, he develops, nevertheless, in connection with this part of his subject certain principles that are distinctly original in conception and that have been very influential in later application.

[1] "Absolute arbitrary power, or governing without settled standing laws, can neither of them consist with the ends of society and government." — *Ibid.*, sec. 137.

[2] *Ibid.*, secs. 151, 212. In these passages Locke adumbrates Rousseau's famous doctrines of the *volonté générale*.

5. *Government: Separation of Powers*

The ends for which civil or political society is constituted being perfectly definite, the means for the attainment of these ends are, according to Locke, correspondingly definite. Life, liberty and property are to be made secure, first, by providing a standard interpretation of the law of nature which fixes these rights; second, by providing an impartial authority to apply this interpretation as between individual members of the given community; and third, by providing for the employment of the force of the community in executing the judgments of this authority and in repelling aggressions by other communities. The only interpretation of the law of nature which can at all accomplish its purpose is that which is embodied in fixed and general rules applicable uniformly to all the members of the given society. An interpretation by arbitrary decree for each question as it arises, no matter from how august a source the decrees might emanate, would make civil life indistinguishable from that in the state of nature; since uncertainty as to the precise extent to which life, liberty and property were secure, would prevail, and this is the very fact that makes the state of nature intolerable and drives men to escape from it.[1] Legislation, therefore, — the formulation of the rules according to which man's natural rights are to be judged, — is the fundamental and primary function of government.

[1] *Treatises*, II, sec. 136.

Logically secondary to this function, but practically quite as indispensable, is that of enforcing by penalties the prescriptions embodied in the laws. This is the executive side of governmental activity. Distinguishable from this again, because concerned with problems characteristic of a state of nature rather than a civil state, is the function of maintaining the interests of the community, or of its individual citizens, in relation to other communities and other citizens, and for this phase of governmental duty Locke suggests the name "federative."[1]

As the legislative is the supreme power in the government, the various forms of government are distinguished solely by the depositary of this power. If the community as a whole retains in its own hands the making of laws, and merely designates magistrates to execute them, the government is a democracy. If the community by a majority vote places the lawmaking power in the hands of a few select men, or of a single individual, the form is oligarchy or monarchy respectively; and the particular terms by which the exercise and transmission of the power are regulated account for the various mixed forms that are known to political speculation. With all the possibilities of variety in forms of government, no possibility is recognized by Locke of more than one species of state, or "commonwealth," as he prefers to

[1] "This . . . contains the power of war and peace, leagues and alliances, and all the transactions with all persons and communities without the commonwealth; and may be called federative if any one pleases. So the thing be understood, I am indifferent as to the name." — *Ibid.*, sec. 146.

call it.[1] The body politic which is constituted by the social pact is the only entity to which the term "state" or commonwealth, as distinct from government, can be applied. This idea, in the form in which Locke works it out, is a novelty in political philosophy. The nearest approach to it in earlier systematic thought is probably the doctrine of popular sovereignty that was formulated by Althusius.[2]

Another feature of his exposition of government in which Locke, though influenced obviously enough by the actual conditions in England, is nevertheless on new ground so far as theory is concerned, is that in which he sets forth the doctrine of the separation of powers.[3] The making of laws and the execution of them are functions, he argues, that make very different demands upon those to whom they are respectively intrusted. The legislature may do all its work in a relatively little time, while the executive must be always on duty. Hence the two functions may properly be assigned to distinct organs. Moreover, it is unwise to give to those who make the laws the duty of executing them, because "they may exempt themselves from obedience to the laws they make and suit the law, both in its making and its execution, to their own private wish, and thereby come to have a distinct interest from the rest of the community, contrary to the end of society and government."

[1] "By commonwealth, I must be understood all along to mean, not a democracy or any form of government, but any independent community, which the Latins signified by the word *civitas*."—*Treatises*, II, sec. 133.

[2] *Supra*, p. 63.

[3] *Treatises*, II, chap. xii.

For both these reasons the two powers are in distinct hands "in all moderated monarchies and well-framed governments."[1] Between the executive and the federative function, also, there is a marked distinction in kind which would suggest that they be intrusted to different organs. But this is not done, Locke says, because each requires the armed force of the community for its action, and evil results would follow if the command of this force should be divided.

The constitution and interaction of the legislative and executive organs are discussed at length by Locke in terms of perfect generality, but nevertheless with obvious reference to the controversies in English politics. The legislative power should be vested, he thinks, in a number of persons who exercise it when they are duly assembled together, but become subject to the laws they have made as soon as they have separated; "which is a new and near tie upon them to take care that they make them for the public good." Where one element of the legislative body consists of representatives chosen by the people, it must be presumed that the people intend that the representation should be fair and equal; therefore, Locke argues, the absurdities of rotten boroughs[2] may properly be abolished by executive power pure and simple. How

[1] *Ibid.*, sec. 159.

[2] "To what gross absurdities the following of custom, when reason has left it, may lead, we may be satisfied when we see the bare name of a town, of which there remains not so much as the ruins, where scarce so much housing as a sheep-cote or more inhabitants than a shepherd is to be found, sends as many representatives to the grand assembly of lawmakers as a whole county numerous in people and powerful in riches."—*Ibid.*, sec. 157.

pressing the need of Parliamentary reform appeared to the philosopher is clearly indicated by this ascription of far-reaching discretion to the monarch; for in all other respects Locke is of course a particularly strong anti-prerogative man.

As between the legislative and the other organs of government, the former is necessarily, he holds, supreme. It is the instrument through which the will of the society is expressed, and the expression of this will necessarily precedes and determines the execution of it. Though the holder of the chief executive power may be at the same time one element in the legislative, and though by custom or expediency he may be vested with important functions in connection with the actual work of the legislature, yet these facts cannot be interpreted as exalting the executive above the legislative power. All the various issues that had been conspicuous in the long struggle in England are resolved by Locke in favour of the contention of Parliament.[1]

As to Locke's treatment of the separation of powers, it is to be observed that he merely suggests the principle as useful in determining the relations of legislature and executive. The tripartite separation which is familiar to-day and the justification of this separation on the ground of the mutual checks which it calls into play have no place in the speculation of Locke, but owe their development to the genius of the Frenchman who so effectively expanded the English philosopher's suggestion.

[1] *Treatises*, II, chap. xiii.

6. *The Right of Revolution*

In previous chapters we have noticed the efforts of political philosophers to discover an ultimate and unquestionable embodiment of governmental authority from whose will no appeal could righteously be made. A determinate human sovereign had been the logical goal of all the anti-revolutionary writers — a man or body of men, forming part of the machinery of government, whose expressed will, being law, was in both the legal and the moral sense binding upon every member of an organized society. Bodin, Hobbes and Filmer had all worked with this aim and had defended their preference for monarchy on the ground that doubt and uncertainty as to what was really the sovereign's will were less likely when the sovereign was an individual than when it was a group of individuals. Locke, while following these thinkers in their doctrine of the supremacy of law, as the essential element in government, refuses, however, to recognize in any determinate human organ an incontrovertible lawmaking authority. He rejects, in other words, the conception of sovereignty as it had been developed by Hobbes and lapses back into the vagueness and uncertainty of the Grotian school of thinking.

That Locke has no far-reaching theory of sovereignty is suggested by the fact, already mentioned, that the term itself is not used in his systematic work. As the conventional and indeed strictly official designation of the authority that attaches specifically to a

monarch, its implications are, of course, such as the philosopher is careful to avoid. The question as to where the "supreme power" in the commonwealth rests, is, however, raised and discussed at length. As between the different departments of the government, the legislative is, as we have seen, held to be necessarily supreme. Its supremacy does not mean, however, anything like absoluteness. The legislature is limited by the ends for which the civil society is constituted, and has no more power than that which is given up by the individual in the social compact. It is bound, therefore, to rule according to the law of nature, to carry on its functions through fixed and general laws rather than arbitrary decrees, and in particular to abstain from taking property without the consent of the owner.[1] Furthermore, the legislative organ, because its authority is merely delegated by the people, cannot transfer this authority to other hands. This conception of a governmental power which, while not absolute, is nevertheless supreme in relation to other governmental powers, is sufficiently intelligible; but the extreme stress laid by Locke upon the subordinate nature of the executive is hardly consistent

[1] *Treatises*, II, chap. xi: "Of the Extent of the Legislative Power." This chapter involves much repetition and more or less that is inconsistent and illogical, indicating the writer's intentness on the end he has in mind rather than the means by which he is to attain it. His particular concern is to deny to the legislature unlimited authority over private property; and accordingly, after declaring as one limitation upon the legislature the law of nature, of which he has repeatedly shown the right of property to be substantially the chief feature, he enumerates the security of private property as another and distinct limitation upon the legislature. Sec. 138.

with the scope of prerogative which he himself allowed to that branch of the government, or with the very remarkable doctrine that the executive may remodel a legislature that has ceased to be fairly representative of the people.[1]

Behind this "supreme" legislature, stands, in Locke's theory, a superior and final embodiment of power, the people. The authority of the legislative is but a trust, to be employed for the needs for which civil society is constituted, and failure to fulfil this trust calls into action the supreme power of the people to remove or alter the legislature. "The community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, whenever they shall be so foolish or so wicked as to lay and carry on designs against the liberties and properties of the subject."[2] But this overruling power of the people or the community or civil society, as he variously designates its possessor, is conceived by Locke as ordinarily dormant, becoming active only when the government is dissolved. It is a cardinal point in his system that government may be dissolved while society remains intact,[3] and he thus is logical in ascribing to the latter an authority above that of the former. But on the test question as to the precise ground and manner in which the society or "the people" is to supersede the government, Locke's answer is no more satisfactory than that of the multitude of popular-sovereignty theorists who preceded him. Government is dissolved, he declares, when the legis-

[1] *Supra*, p. 357. [2] *Treatises*, II, sec. 149. [3] *Ibid.*, sec. 211.

lature is so transformed as to bring the lawmaking power into hands other than those to which it was intrusted by the community at its organization, or when either legislature or executive acts contrary to its trust.[1] But on the vital point as to who shall decide when these dissolving conditions exist, he has no more definite answer than "the people." No procedure is provided through which the judgment of the people on the issue is to be arrived at, though Locke appears to feel that no less than a majority will actually take any decisive step.[2]

This whole theory as to the power of society to displace the holders of governmental authority is, of course, merely one version of the so-called "right of resistance." Locke's phrase for designating this right is the "appeal to Heaven," which he regards as the privilege not only of the body of the people but even of any single man. This seems hardly consistent with his earlier doctrine that the individual who expressly makes himself a party to the social pact is irrevocably determined to be a member of the society and as such is concluded by the voice of the majority.[3] The permanence of social life seems to be the necessary result of the one doctrine and anarchy of the other. Locke, however, feels quite sure that the recognition of the "appeal to Heaven" does not from the practical point of view involve anarchy. "The people" are as a rule "more disposed to suffer

[1] *Treatises*, II, secs. 212–221 *et seq.*
[2] *Cf.* secs. 168 and 209.
[3] Compare secs. 97 and 121 with secs. 168 and 241.

than right themselves by resistance." Only when injustice and oppression have gone very far and have become obvious to a majority of the people will the "appeal to Heaven" actually be made. In both the lack of logic in his theory and his serene confidence in the moderation of those who may apply it, Locke manifests a spirit which in a most impressive way was characteristic of the Whig Revolution that he was defending.

7. *Locke's Place in the History of Political Theory*

Regarded in his relation to the seventeenth century as a whole, Locke stands high in that group of thinkers who promoted the rationalistic idea of life — who preached that the earth and all the institutions thereof were made for man, not man for them, and that whatever the importance of unquestioning faith in preparation for the life to come, the peace and comfort which were sought by man in the present life were to be secured only by the relentless application of reason to all the problems that arose.

As between the two schools which divided the adepts of ethical and political philosophy, Locke belonged with Grotius rather than with Hobbes. Of the two coetaneous thinkers whom we have noticed, he was nearer to Pufendorf than to Spinoza, although his discussion of individual liberty is often singularly suggestive of the latter. As the works of Pufendorf and Spinoza had been before the world of scholarship for many years when Locke published his

political writings, and as Locke was peculiarly familiar with current philosophy, there is no room to doubt that the many points of coincidence between his theory and theirs were the results of conscious adoption. Where he departs from his predecessors and strikes out on new lines of thought, the conditions of English practical politics are in most cases clearly responsible.

The most distinctive contribution of Locke to political theory is his doctrine of natural rights. In this he takes the ideas of the Independents[1] and gives them a fundamental position in his general system. Life, liberty and property he represents as inalienable rights of every individual. The peculiarity of his treatment of this familiar concept is in the definiteness with which these rights are made to appear as the concrete privileges of actual living men. In the law of nature as treated by Pufendorf, and in the liberty that is eulogized by Milton and Spinoza, there is, despite the purpose of the writers to set up real barriers to despotism, a general effect of abstraction and unreality, or at best an impression that the immunity that is aimed at must be the privilege of only very wise and exceptional men, not of every ordinary mortal. Locke's equal rights, on the other hand, are so inwrought in his explanation of political institutions as to appear indispensable to the very existence of an actual political community. The happiness and security of the individual figure, not as essential to the perpetuity of a government, but as

[1] *Supra*, p. 236.

the end for which alone government is ever called into existence.

Freedom of worship is not included by Locke strictly within the list of natural rights. It is not one of those privileges of the individual for the defence of which government is instituted. His plea for toleration rests rather on the doctrine that the state has nothing whatever to do with forms of worship. The worship of God is a means to eternal salvation, and as such lies entirely outside the sphere of the state. The organization which takes care of that matter is the church and the spheres of church and state are mutually exclusive. For his definition of a church Locke adopts in full the idea of the Independents: It is "a voluntary society of men joining themselves together of their own accord in order to the public worshipping of God in such a manner as they judge acceptable to Him, and effectual to the salvation of their souls."[1] With such an extreme and uncompromising conception of religious society he has no difficulty in establishing its absolute distinction from a civil society and in removing from the jurisdiction of the latter everything that pertains to the care of souls. The commonwealth, whose function is to provide for the material and temporal security of its members, is limited strictly to what concerns that matter and is bound by the nature of its being to permit men to seek their future salvation in any manner they choose. Not only Presbyterians, Independents, Anabaptists, Arminians and Quakers,

[1] *Letter concerning Toleration.*

but even Pagans, Mohammedans and Jews are by right entitled to the same civil privileges as those of the more orthodox manner of worship. The comprehensive toleration thus established by Locke is sustained by the same rationalistic reasoning that Milton had employed, and the only qualifications introduced are three that are based on strictly political considerations: first, there need be no toleration of opinions that militate against the existence of civil society or contravene the principles of morality on which society rests — a qualification that had been laid down by Spinoza;[1] second, no right of toleration can be claimed by a church so organized that its members are subject to another prince — a familiar principle on which Catholics were excluded; and third, there is to be no toleration of atheists, since "promises, covenants and oaths, which are the bonds of human society, can have no hold on an atheist."[2]

In this doctrine of religious toleration Locke hardly reaches so advanced a point as that attained by Spinoza, or even Milton, in their pleas for freedom of opinion. His purpose, indeed, is more restricted than theirs, and he strives only to make a case for freedom of worship, although a general toleration of expression is implied at some points in his argument. It is quite characteristic of Locke, however, to pause before reaching the extreme point in the logical development of a theme. Moderation and the avoidance of extremes is eminently his chief philosophical

[1] *Supra*, p. 315. [2] *Letter concerning Toleration.*

quality, showing itself in the political as well as the other branches of his thinking. He has none of that confidence which Hobbes and Spinoza manifest in the capacity of the human intellect and judgment for the solution of all the problems that human conditions can suggest. Probable truth rather than absolutely certain truth is the ultimate goal that he has in view in his general philosophy, and similarly a practical working system rather than an absolutely perfect one is the goal of his political philosophy. This was indeed the goal of the Revolution of 1688. The memory of many participants in the movement retained most vivid impressions of the consequences of extreme proceedings forty years earlier, and these men were successful in giving a wholly opportunist character to the procedure. Locke's political theory corresponded to this Whiggish practical work. It was a theory treating of a state of nature that was not altogether bad, and its transformation into a civil state that was not altogether good, by a contract which was not very precise in its terms or very clear in its sanction. It embodied, moreover, a conception of sovereignty of the people without too much of either sovereignty or people; of the law of nature that involved no clear definition of either law or nature; of natural rights, but not too many of them; and of a separation of powers that was not too much of a separation. It concluded, finally, with a doctrine as to the right of revolution that left no guarantee whatever for the permanence of the rather loose-jointed structure

which the rest of the theory had built up. Yet this illogical, incoherent system of political philosophy was excellently adapted to the constitutional system which England needed at that time and which the Whigs actually put and kept in operation. It was a good, respectable, common-sense view of the features of political life that impressed a philosophical observer; it was strong in the individual parts, if not in their correlation, and it was far better adapted to make an impression on thinking Englishmen than were the more logical systems of Hobbes and Spinoza. It was Locke's theory that was brought over, supported by the practical illustration of the accomplished Revolution, to the Continent, where many of its elements were taken up and developed to their logical limits by the thinkers of France. The systems which resulted in the revolutionary period there are hardly more satisfactory, in the perspective of history at least, than the less coherent doctrine which was set forth by the Englishman.

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CHAPTER XI

FROM LOCKE TO MONTESQUIEU

1. *Intellectual and Political Conditions*

AFTER Locke's *Treatises on Government*, more than half a century elapsed before a work on political theory appeared that could be compared with Locke's in respect of either scientific spirit or far-reaching influence. Montesquieu's *Spirit of the Laws*, published in 1748, closed the long gap in the progress of systematic politics; its author was born (1689) while Locke was writing the *Treatises on Government*. That either practical politics or political debate had languished during this interval is of course very far from true, but both the practice and the debate of the time were either far above or far below the level at which political philosophy proper finds its greatest inspiration.

On the Continent the questions which excited the interest and activity of publicists were the questions of international relations centring about the balance of power. Louis XIV, who was at the height of his glory when Locke wrote, perceptibly declined in greatness during the remaining quarter century of his reign, and this decline was chiefly indicated by the tremendous conflict over the Spanish succession which absorbed so much intellectual energy in mili-

tary, naval and diplomatic problems involving the whole world. The partial adjustment reached by the Peace of Utrecht in 1713 was far from terminating the ambitions and jealousies of the great powers or the terror of the lesser powers, and warfare, potential or actual, prevailed in Europe throughout the period with which we are dealing. The wars were in conscious purpose almost exclusively dynastic. It was for the interest of the Hapsburg or the Bourbon or the Hohenzollern family, not that of the German, the French or the Prussian people, that the campaigns were planned and carried on and the treaties were concluded. Where the interests of agriculture, commerce or industry came into play, as was often the case, they were regarded from the point of view not of the farmers, merchants or manufacturers, but of the monarch to whom the profits of these classes paid tribute. The complete identification of the state with the monarch and of the interests of the subject with the particular, narrow, personal and dynastic interests of the ruler, left little room for any political philosophy save that which was incidental to the diplomatic intercourse of governments. The principles of international law, which through Grotius and Pufendorf had attained such full development, received much addition and some extension during this period. But those principles lay much more in the fields of ethics and jurisprudence than in the field of politics; they were above the level on which political philosophy proper does its work.

Below that level, on the other hand, there was in

one European nation, though not on the Continent, a very great activity during the period with which we are dealing. Great Britain displayed after the Revolution of 1688 a remarkable development of that species of politics which is involved in the conflict of parties. During the reign of William and Mary and that of Anne Parliamentary government became definitively established in England. The monarch made no attempt to govern without the annual meeting of Parliament, or without ministers who could command the support of the two houses. In the selection of ministers the monarchs strove consistently to disregard distinctions of party, but the trend of events made their efforts increasingly unsuccessful. For the accomplishment of the revolution Whigs and Tories had coalesced, but soon after success was assured the lines dividing the parties began again to be manifest in Parliament and in the country at large. These lines were only vague and were crossed by many powerful currents of interest and tradition among the great families that furnished the political leaders of the day; yet with ever increasing certainty the choice of ministers and the corresponding divisions of Parliament came to be determined by considerations of party. Probably the most potent cause operating to promote this tendency was the question of the succession to the crown. The sentiment in favour of the return of the Stuarts, as the legitimate line by divine right, was a distinctively Tory characteristic; and the Hanoverian Protestant succession was distinctively Whiggish. On this issue the Whigs won a decisive triumph at the death of

Queen Anne in 1714, and until after Jacobitism had been finally extinguished in the bloodshed of Culloden in 1745, no Tory government came to power.

During this long ascendency of the Whigs — the era of Walpole — the philosophical principles which had differentiated the two parties gradually faded into insignificance. Under the leadership of such cynical minds as Bolingbroke and Swift the Tories ceased to stress the divine right of the old line to return; and in the long enjoyment of power through harmonious relations with the first two Hanoverian kings, the Whigs abandoned their attitude of distrust toward the royal authority. The old party names were in fact displaced by two that more distinctly indicated the actual divisions between them, *viz.*, Court Party and Country Party; and all the contests between them came to turn almost exclusively upon the pursuit of public office with its dignity and emolument. The two parties vied with each other in protestations of respect for the Revolution of 1688, and of acceptance of the constitutional order which had grown out of that event. What exactly this order was, and whether the party in power was in full conformity to it, were the ultimate questions debated in England. On the Continent the questions as to the precise meaning of the Revolution and as to the precise nature of the English constitution as modified by it, were in large measure responsible for the recrudescence of political philosophy in its broadest aspect. While the brilliant representatives of English literature at this time — Swift, Atterbury,

Addison, Steele and the others — turned their genius to the discussion of petty incidents of the struggle for power and temporary issues of trade and finance, foreign observers like Voltaire and Montesquieu went below the surface and sought in the basal principles of the English constitution the foundation for a political system of universal validity.

While the conditions of English constitutional life thus furnished the material for a revival of political philosophy, the impulse to make use of this material sprang from a notable expansion of the liberalizing spirit in all branches of intellectual activity on the Continent. The movement was very widespread, but found its most striking manifestation in France. After the death of Louis XIV in 1715 the restraints imposed by the obscurantist interests at court were much relaxed, and though nothing like freedom of expression was permitted, the writings of Fénelon, the Abbé St. Pierre, and the Marquis d'Argenson evinced a tendency diametrically opposed to that which was involved in the teachings of Bossuet, while the remarkable activity of Voltaire, who was in the maturity of his powers at the middle of the century, suggests in a word the new trend of intellectual life. In Germany Thomasius and Wolff carried on a rather unequal contest with the ruling theological influences at the courts of the petty princes of the Protestant states, but with the accession of Frederick II to the throne of Prussia in 1740 the influence of this greatest of the North German principalities was thrown decisively into the scale

in favour of the liberals. Meanwhile, at the other extreme of Europe, in the hopelessly reactionary kingdom of Naples, a thinker of peculiarly original genius, Vico, produced a philosophical system which, though dealing only incidentally with political science, is worthy of notice as illustrating the wide range and the profound effect of the intellectual conditions which contributed so largely to the later developments of the eighteenth century.

Both the trend of politics in England and the general movement of philosophy on the Continent were traceable in no small measure to the influence of Locke. Both also were intimately concerned in the political theory of Montesquieu. Some slight consideration then of the ideas to be found in the fields most nearly related to scientific politics between the work of Locke and that of Montesquieu will be useful in understanding the transition from the one great philosopher to the other.

2. *German Theories: Wolff; Frederick the Great*

In Germany, the gap between Locke and Montesquieu was dominated, so far as politics proper was concerned, by the voluminous and extraordinarily systematic works of Johann Christian Wolff (1679–1754). Wolff in politics as in general philosophy contributed relatively little of novelty, but made a very considerable impression by the exceedingly great precision with which he formulated and organized his ideas. His political doctrines were not different from those which through Grotius and Pufendorf had been before

the world for several generations. Wolff's system was embodied in a treatment of (1) the law of nature, covering the whole matter of ethics, (2) the law of nations, covering all the principles of international relationships, and (3) politics, covering the theory of the state.[1] His law of nature (*ius naturæ*) was very similar to that of Pufendorf, with some of the modifications suggested by Leibnitz and Thomasius. The doctrines of political bearing treated under this head were the familiar dogmas of the liberty and equality of all men in the state of nature, and of the origin of political society in the surrender of rights by the individual. At the other end of the line his doctrine as to sovereignty and government involved substantially the principles which culminated in the patrimonial state. It seems unintelligible to-day that Wolff should have been a martyr of liberalism. His doctrines would not now be put under that category; but he was in spirit too rationalistic for the orthodox theologians of his own time, and at their instance in 1723 he was summarily banished from the Prussian dominions with only forty-eight hours' notice, by the choleric father of Frederick the Great. One of the first acts of Frederick on ascending the throne in 1740 was to invite Wolff to return to Prussia for the enjoyment of high academic honours.

With this act of justice to a now aged philosopher,

[1] His comprehensive work was *Ius Naturæ methodo scientifica pertractatum*. The substance of his theories may be found in the smaller works: *Die Politik* (1721) and *Institutiones Iuris Naturæ et Gentium* (1750).

Frederick confirmed the general impression that his sympathies were with the progressive and rationalistic thought of the time. Although this monarch's work, so far as politics is concerned, is to be found chiefly in the field of practice, nevertheless his contributions to political philosophy were by no means insignificant. Long before he ascended the throne he had set forth in a monograph on the existing conditions in Europe his contempt for the obscurantist ideas that prevailed in the princely courts of the times. He admonished the princes very curtly that they were not in their position by any special favour of God, but that they were there by the grace and for the welfare of their subjects. In his *Anti-Machiavel*, written only the year before he came to the throne, Frederick again put great stress on the duties of kingship as contrasted with its rights. He asserted roundly that a monarch is merely the first servant of the state; that the justification for his occupancy of the throne is to be found only in what he can contribute to the welfare of his subjects. For the prevailing notion, especially in German principalities, that the people were merely the private property of the prince, Frederick had no respect whatever. Further, he took Machiavelli to task and castigated him unmercifully for the doctrine in *The Prince* that the ruler is not to be bound by the ordinary principles of morality in promoting the ends of the state. In this matter Frederick was soon put on the defensive by his own particular conduct as sovereign and was obliged to concede that in practice at least, if

not in theory, the doctrine of the Italian was sound.

In the last year of his life Frederick wrote also a short but eminently sane *Essay on Forms of Government and on the Duties of Sovereigns*,[1] and in this as in the earlier works he manifested his consciousness of the new spirit that was at work on the Continent, foreboding the Revolution. By his extraordinary success in building up the Prussian state, Frederick acquired a position in Europe which secured a great influence for everything of philosophical character that came from his brain. It is not unfair, therefore, to find in him the most distinguished representative, so far as political philosophy is concerned, of the new spirit in Germany by which the doctrines of the era of Locke[2] were carried over to the time of Montesquieu.

3. *British Theory; Bolingbroke and Hume*

In Great Britain the period between Locke and Montesquieu was the heyday of the essayists, when any one who had anything to say on the political, social, literary or other topics of the time, and many a one who really had nothing to say on these subjects, ventilated his thoughts in the periodicals, for the most part weekly, which were the prevailing vehicle for public opinion. This literary form was but ill adapted to the presentation of any comprehensive

[1] Posthumous Works, translated, Vol. V.

[2] Frederick was a great admirer of Locke and of his philosophy, both in general and in respect to government.

and coherent philosophy; and among the great number of brilliant writers whose essays of this period survive, Bolingbroke and Hume[1] alone offer anything that need detain the seeker after general political theory. These two writers had indeed little in common save a radical hostility to the orthodox religious belief of the day. In politics Bolingbroke was the most vehement spirit of the Tory or Country Party, pursuing Walpole with savage fury and finding in party strife the nation's salvation;[2] while Hume, mildly Whiggish if of any party complexion whatever, deprecated party contention as not only detrimental to the welfare of the nation, but, what was worse in his eyes, unphilosophical and incompatible with the poise demanded of the serious seeker after truth.

Yet despite the wide divergence in the qualities of the two men, they both illustrate the trend of political theory between Locke and Montesquieu by their

[1] Bolingbroke (1678–1751) was a typical essayist of the periodical school, his papers appearing in the *Craftsman*. Hume (1711–1776) designed his essays for periodical appearance, but they were actually published all together, the first volume in 1741 and the second a year later. Thus though Hume was twenty years younger than Montesquieu, the *Essays*, which embodied Hume's chief contribution to political theory, antedated by seven years the *Spirit of the Laws*, which was the greatest product of the Frenchman's philosophy. For this reason, as well as for the reason that Hume's intellectual affinity was closer with the older than the younger of his British contemporaries, I have considered him before rather than after Montesquieu.

[2] In the abstract Bolingbroke professed to regard parties as detrimental to a state; but this theoretical doctrine was wholly irreconcilable with the principles which he set forth in his treatment of English politics, where he proclaimed incessantly that a party in opposition to that of Walpole was indispensable to the safety of the nation.

comment, chiefly incidental, on two topics, the English constitution and the "original contract." To both thinkers the constitution as shaped by the Revolution of 1688 appears a most perfect example of that mixed form of government which, ever since Polybius and Cicero, had been so frequently eulogized by philosophers. Its essential principles are held to be, as to organization, the blending of monarchic, aristocratic and popular elements in the government, and as to action, the maintenance of an equilibrium by the reciprocal checks of the monarch, the House of Lords and the House of Commons upon one another.[1] Both Bolingbroke and Hume held that the liberty which was the boast of Englishmen could be preserved only by preventing the undue preponderance of either of these organs. The one writer directed the fiercest assaults on Walpole on the ground that the system of Parliamentary corruption which the minister employed gave too much power to the crown; the other writer believed that the practices of Walpole were in a measure justifiable as a means of preserving the power of the crown from the encroachments of the House of Commons.[2] This doctrine of the mixed form of government and the check and balance system was a conscious adaptation of ancient philosophy, and the analogy between Roman and British politics was very common in the literature of this time. Bolingbroke, moreover, like many an

[1] Bolingbroke, *Dissertation on Parties*, Letter 13. Hume, "On the Independency of Parliament," and "Of the Liberty of the Press."

[2] Hume, "On the Independency of Parliament."

earlier philosopher of the Christian era, found evidence of divine sanction for the mixed form of government in the Mosaic constitution of the Israelitish state.[1]

But behind the governmental organs in whose interaction was found the guarantee of liberty, all the thinkers of this period followed Locke in the conception of a "people" in whom the supreme power of the state was inalienably vested. The people, or the "community," was conceived as the essence of the state and the maker of the constitution.[2] At the basis of the relation between the people and the government was generally understood to lie the entity which figured in the thinking of the time as the "original contract." The vogue of this term was as great as its meaning was vague. Locke had set forth, as we have seen, a fairly clear and distinct doctrine of the social pact, but this was not at all adhered to in the succeeding generation. More common was the sense that had been embodied in the famous resolution of the Convention in 1688, which declared that King James had "endeavoured to subvert the constitution of the kingdom by breaking the original contract between king and people."[3] Bolingbroke clearly had this phrase in mind in most of the numerous instances in which he referred to the contract; but he was

[1] *Dissertation on Parties*, Letter 16.

[2] "By constitution we mean . . . that assemblage of laws, institutions and customs derived from certain fixed principles of reason directed to certain fixed objects of public good, that compose the general system according to which the community hath agreed to be governed." — Bolingbroke, *ibid.*, Letter 10.

[3] Cobbett's *Parliamentary History*, V, 50.

unable to limit himself to the narrow idea which it expressed. That the great statutes securing the results of the Revolution were "original contracts" between the new monarchs and the people, and that the constitution "is in the strictest sense a bargain, a conditional contract between the prince and the people," he deemed unquestionable.[1] At the same time he conceived that the constitution also was a conditional contract "between the representative and collective bodies of the nation"—that is, between Parliament and the people—and that the people had the right and the power to resist an erring Parliament as well as to resist an erring king.[2] Bolingbroke's general purpose was to avoid the recognition of an absolute and uncontrollable power anywhere in political society—to make the operation of government depend upon the balance of various powers. To this purpose the idea of contract would readily lend itself; but the varying phases of the party controversies which furnished the text for his essays prevented him from adhering to any one logically clear idea as to what the nature of the contract should be.

Hume, on the other hand, brought to the discussion of the "original contract" one of the most important contributions to be found in the history of political theory. It consisted in an incisive and annihilating attack on the whole doctrine of contract as the explanation and justification of government.[3]

[1] *Dissertation on Parties*, Letters 9–13. [2] *Ibid.*, Letters 10, 17.

[3] "Of the Original Contract," in his *Essays, Moral, Political and Literary*, Vol. I, p. 443. Compare also "Of the Origin of Government," *ibid.*, p. 113.

He assailed the doctrine in both its historical and its philosophical aspects. The earliest combinations of primitive men, he argued, may be said to have been formed by common consent, since no individual had strength or force enough to compel subjects to obey him; but there was in this nothing of formal contract, since such an idea was far above the intelligence of the persons concerned. Obedience was determined in one matter at a time and gradually became habitual. In later days and at the present day obedience is for the most part a matter of custom and habit. The majority of men, so far as they think about the matter at all, are satisfied to follow the conduct of their ancestors in submitting to a certain family or form of government. In all the changes of governmental organization which are in progress — in the formation of empires, the destruction of long-existing states, the planting of colonies and the migrations of peoples — Hume finds no evidence that agreements between princes and peoples play any part. The Revolution of 1688, he points out, was effected in reality by the majority of some seven hundred persons, though it determined the government for ten millions; the latter acquiesced, but not from any such rational consideration as is involved in the idea of contract. Consent of the governed is, Hume admits, one perfectly valid basis for government, but it presupposes in a given body of men a perfect regard for justice and a perfect understanding of their interests — presumptions which have no foundation among actual men. So also the doc-

trine that the subject tacitly consents to the dominion of the sovereign whom he obeys, is a valid explanation of the situation only if the subject is at liberty to leave the country when he chooses; but most governments would promptly stop the individual who should try to assert any such privilege.

Having thus shown the incompatibility of the doctrine of contract with the facts of history and present observation, Hume proceeds to demolish the purely logical foundations of the theory. His ethical doctrine supplies the means for his purpose here. He is a Hobbesian in his view of human nature — "every man must be supposed a knave" — and a utilitarian in ethics. A sense of the advantage to the individual of peace and order in social life is, in last analysis, he holds, the reason for the general submission to established authority. In this, as in all other phases of conduct, "utility" is the determining motive. On the basis of this idea Hume rejects the contract theory as wholly unnecessary for the rational justification of government. His argument could not be put more effectively or more concisely than in his own words:

What necessity, therefore, is there to found the duty of *allegiance* or obedience to magistrates on that of *fidelity* or a regard to promises, and to suppose, that it is the consent of each individual, which subjects him to government; when it appears that both allegiance and fidelity stand precisely on the same foundation, and are both submitted to by mankind, on account of the apparent interests and necessities of human society? We are bound to obey our sovereign, it is said; because we have given a tacit promise to that purpose. But why are we bound to observe our promise? It must here be

asserted, that the commerce and intercourse of mankind, which are of such mighty advantage, can have no security where men pay no regard to their engagements. In like manner, may it be said, that men could not live at all in society, at least in a civilized society, without laws and magistrates and judges, to prevent the encroachments of the strong upon the weak, of the violent upon the just and equitable. The obligation to allegiance being of like force and authority with the obligation to fidelity, we gain nothing by resolving the one into the other. The general interests or necessities of society are sufficient to establish both.

If the reason be asked of that obedience, which we are bound to pay to government, I readily answer, *because society could not otherwise subsist:* And this answer is clear and intelligible to all mankind. Your answer is, *because we should keep our word.* But besides, that no body, till trained in a philosophical system, can either comprehend or relish this answer: Besides this, I say, you find yourself embarrassed, when it is asked, *why we are bound to keep our word?* Nor can you give any answer, but what would, immediately, without any circuit, have accounted for our obligation to allegiance.[1]

In these words Hume announced the doctrine which, transmitted through Bentham and the distinguished line of English utilitarians, was in the nineteenth century to play a decisive part in wresting from the contract theory its century-long dominion over the realm of political theory.

4. *Italian Theory: Vico*

The Italian representative of the transition period with which we are dealing, Gian Battista Vico (1668–1744), has a significance in the history of political theories only as an exponent of the historical method

[1] *Essays*, Vol. I, pp. 455–456.

in the discussion of social and political problems. The "new science"[1] which is the subject of his greatest work is substantially a philosophy of history — a body of principles through which the course of human progress in general may be interpreted and even predicted. The chief expression of this progress and of the enlightenment of mankind is to be seen, according to Vico, in the institutions of law and government, and, therefore, the development of these institutions is an important element in the exposition of the science which he is setting forth. His theories as to the order and manner in which governments arise and pass away are novel and interesting; but the most striking features of his work are not so much in these as in other fields, and especially in the correlation of ingenious generalizations in metaphysics and philology with his new interpretation of familiar facts in politics and jurisprudence. A philosophy which has its initial doctrine in the proposition that the phenomena of humanity are in last analysis reducible to the three categories, knowledge, will and power (*nosse, velle, posse*); which devotes much attention and attaches great significance to the theory that Homer and his poems denote not an individual and his work, but an age and its views of life; and which concludes with a forecast of the political development of Europe: — such a philosophy is clearly a profound and comprehensive system.

[1] *Principi di una Scienza Nuova*, published first in 1725, and in a much modified second edition in 1730.

Nor is it true of Vico's work, as it is of many another whose scope has been equally ambitious, that the modern reader finds himself repelled by the frequent occurrence of hopelessly absurd ideas. Vico, though in some few points archaic, meets the test of later standards well; he is indeed a philosopher of the nineteenth-century rather than the eighteenth-century type, and it was to this that was due the general lack of recognition until the later epoch.[1]

The Italian's contribution to political theory is to be found chiefly in his doctrines as to the forms and sequence of human governments.[2] The forms are (1) theocracy, (2) aristocracy and (3) the free state, the last-named including both republics and monarchies, and the sequence that is revealed by his interpretation of history follows the order in which these are here mentioned. By theocracy, he designates the government in which the direct authority of God, expressed through oracles, is the source of all political power. By aristocracy, he means the organization which is effected by the independent heads of families in primitive times, and which, even when its government is directed by a king, rests on the supreme authority of these associated heads. The free republic is the governmental form in which political power is the possession of not only the ancient aristocracy, but also the whole mass of

[1] Flint's *Vico* gives in compact form a good account of the philosopher's life and works.

[2] The analysis of the various forms is most fully treated in his work *De uno universi Iuris Principio et Fine uno;* the sequence is to be found there, sec. 155 *et seq.*, and also in the *Scienza Nuova*, Lib. IV.

population, which has become an integral part of the community. Monarchy is the type in which the governmental authority has been taken over to be exercised on behalf of the people by an individual. These are the forms which to Vico are clearly discernible in history, and which alone have an unshakable foundation in true philosophy. The mixed forms which appear from time to time are merely phases of the transition from one of the type forms to the next in sequence. Thus the power of the senate and the *optimates*, which made the Roman Republic "mixed," was a survival of the old days when the nobility were the only element in the government; and the nominally representative character of the monarch, in the time, for example, of the Roman Principate, shows the influence of the popular régime which was passing away.[1]

This classification and sequence of governmental forms Vico derives primarily, like the most of his ideas, from Roman history; but he finds his theory supported by the facts in the history of other peoples so far as we know them, and he believes that since the chaos of the Teutonic invasions the theocracy and aristocracy of the first two stages have successively characterized Europe, and that the free commonwealth and monarchy are sure to develop in their turn.[2] But it is not merely on the observation of history that he depends for his doctrine. His analysis of the institutions characteristic of each of the phases of political development enables him to show

[1] *Scienza Nuova*, Lib. IV. [2] *Ibid.*, Lib. V.

that these phases have an intimate relation to the ultimate principles of general philosophy. He sees all phenomena in triads, corresponding to the three species of states. He finds three kinds of nature, three kinds of social character (*mœurs*), three kinds of language and alphabet, three kinds of jurisprudence, of authority, of reason and of judicial procedure, and one element in each of these triads finds its expression in each of the forms of state. History in its largest aspect shows that mankind develops in a recurring cycle of three stages — the divine, the heroic and the human, and political organization corresponds to these. The sequence of governments, then, is not a movement to be deprecated and to be combated by political science, but is an inevitable consequence of the divine plan embodied in the creation.

Though Vico's triopsis is at some points rather forced and unreal, yet he presents on the whole a very remarkable interpretation of institutions social and political, in connection with the various phases of human government. His method of thought furnishes a striking contrast to that of the natural-law philosophers, who dominate the thinking of the time. With them the ideal is a body of law, rights and authority which, corresponding to a perfect and unchanging human reason, must be good for all times and places; with Vico there is no perfect and unchanging reason save that of God, and in all human affairs law, rights and authority must inevitably vary according to the stages of general

enlightenment. Much as he admires Grotius, Vico cannot but jeer at the amiable attempt of the Dutch philosopher and his followers to ascribe validity for all ages to the rational interpretation of the law of nature which belongs, in reality, only to their own age.[1]

In his persistent emphasis on the transitions of human affairs, and in his explanation of political institutions in terms of their environment, Vico often strongly suggests the method of Machiavelli and of Bodin, to both of whom he makes frequent reference; but more than either of these, Montesquieu is suggested, as we shall see, by Vico. The Italian's elaborate discussions[2] of the forms of government in reference to the national character, and of the conceptions of justice, law, custom and jurisprudence in the variations due to the nature of the different forms of government, are strongly suggestive not only of the general scope but even of certain specific chapters of Montesquieu's greatest work. It need not be held that the French philosopher took consciously from the Italian without credit, but there is certainly cause for the reflection that the complacent legend with which Montesquieu characterized his work —*prolem sine matre natam*— might more accurately have taken the form *prolem permultis matribus natam;* and in the list of the many mothers the systems of Locke and Vico would occupy a distinctive place.

[1] Vico, *Opere*, Vol. V, p. 488.

[2] Especially in the *De uno universi Iuris Principio.*

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CHAPTER XII

MONTESQUIEU

1. *General Conditions of his Work*

THE profound impression made by Montesquieu on French critics, not only contemporary with him but also of all generations to the present day, may be traced in part to other causes than the merely philosophical character of his work. As much probably is due to the form and time of appearance as to the substance of his speculations. He was a true French *littérateur*, and in making his way to public notice he conformed very exactly to the requirements of the time for the acquisition of that character. Though by birth a provincial, and by temperament not at all frivolous, he regularly won the approval and applause of the fashionable Parisian literary world, the salons, before taking up his serious work. His *Lettres Persanes*, published in 1721, satirized existing institutions, political, religious and social, with just the mixture of wisdom, wit and lubricity that appealed to the taste of the day, and he became at once a member in good standing of the literary set, with admission soon to the Academy. With the official stamp of *homme d'esprit* thus clearly set upon him, he devoted himself to preparation for the work which was to break the long silence of the French spirit on rational politics. For, with the exception of

Bossuet, whose eminence in this particular field may possibly be questioned, no Frenchman had put forth an important and comprehensive work of political philosophy since the Bourbons ascended the throne at the end of the sixteenth century.

The period covered by Montesquieu's mature life was a period in which many facts pointed to the revival of political speculation. The last years of the life of Louis XIV had tightened the bonds which repressed the French spirit, and after the death of the great monarch, in the days of the regency and of Louis XV, manifestations appeared in great numbers of a reaction against the régime of oppression which had prevailed. The spirit of scepticism, and with it the spirit of a rational liberty, appeared in many ways. Immediately after the death of Louis XIV the ideas of Fénelon as to a less repressive governmental system were seriously discussed, and the application of the ideas in practice seemed at one time quite probable. Later the Abbé de St. Pierre put forth with considerable freedom his criticisms of the existing conditions in French government, and his suggestions and criticisms made doubtless some impression, though in general he was regarded as a hopeless visionary and a sort of privileged nuisance. The Marquis d'Argenson formulated a comprehensive scheme of constitutional reform directed in general toward converting the existing monarchic despotism into what would be at least an enlightened despotism.[1] At the same time Voltaire was

[1] For St. Pierre and Argenson, see Janet, *Histoire*, II, 305 *et seq*.

beginning that career of sharp, cynical and very effective criticism of the censorship from which particularly the more independent thinkers of the day were suffering.

With the tendencies of thought thus in the air, Montesquieu was in entire sympathy, and for the development of his ideas in the field he set to work to prepare himself by study and by travel. The hereditary magistracy which he held he sold in 1726, and thenceforth he devoted himself to preparation for his philosophical work. His studies included particularly the history and the state system of the Romans, and his travels covered the leading political divisions of Europe, his longest stay being made in England. Whatever his observations on the Continent may have contributed, his English connections were unquestionably the most influential in determining his thought. In England he came in contact with the spirit of Bolingbroke and the other politicians of the higher type, and he absorbed in full the conception of English liberty and of its constitutional guarantees that prevailed among them.

With the preparation, then, which his travels and his very wide researches into the institutions and customs of all the peoples of the world had given him, he gradually worked out his *Spirit of the Laws*. The work was not published until 1748. Midway between it and his earliest publication stands his famous essay on the *Greatness and Decline of the Romans*,[1]

[1] *Considérations sur les causes de la grandeur des Romains et de leur décadence.*

which appeared in 1734. In this was revealed clearly enough the character and method of his philosophy. The essay was a philosophical analysis of the history of Rome, sketched in very broad lines. It does not embody, like the work of Vico, any original contributions to the criticism of the sources of Roman history. Like Machiavelli, and indeed like all the writers of the Renaissance period, Montesquieu assumed the accuracy and sufficiency of the accounts left by the Roman historians and made these accounts the basis of his generalizations as to the course of Roman affairs.

On the whole it may be assumed that Roman history and contemporary English institutions were the chief elements in determining the purpose as well as the general system of Montesquieu's political philosophy. It is from these two sources that he derived that conception of liberty which is in the main the central practical theme of his philosophy.

2. *Method and First Principles*

The field covered by *The Spirit of the Laws* is so extensive as to make it a work rather of social science than of politics proper. The lines of Montesquieu's survey are those of the Greek philosophers, comprehending all the institutions of social existence. While his general spirit is strongly suggestive of Aristotle's *Politics*, his point of view is often evidently that of Plato's *Laws*. He puts himself in the position of the legislator, in the sense so common in antiquity — the man of almost superhuman sagacity,

like Solon and Lycurgus, intrusted with the formulation of a code to regulate a given society. The problems that would confront such a legislator are the problems which particularly interested Montesquieu. For their solution, however, his method is that of Aristotle, not of Plato, of Bodin, not of Hobbes or Locke. Like all the thinkers of his time he would look to nature for the criterion of his law. But the teachings of nature would be sought not in deductions from abstract assumptions of pure reason, but in the concrete facts of life both present and past. His explanation of social phenomena, and of the laws which govern them, is derived chiefly from history and observation, and the explanation so derived is in his philosophy the chief element in framing a judgment as to the moral or political value of any legislation.

Montesquieu's particular line of approach to political and social problems is apparent in his opening book, "Of Laws in General."[1] The laws, in the widest sense of the word, are, he says, "the necessary relations springing out of the nature of things."[2] This opening sentence of his work drew upon Montesquieu

[1] The system of subdivisions in *The Spirit of the Laws* is somewhat unusual. The work consists of thirty-one "books," each book being divided into "chapters." Montesquieu's "book" corresponds in coherence and length to what is ordinarily called a chapter; and his "chapters" are short, often consisting of a single paragraph and sometimes of a single sentence. Each "chapter" has a special caption, and this fact has its useful side; although when the caption is merely "Reflection" (XIX, xi) or "Fine Law" (XX, xvi) or "Problem" (XXI, xxiii), the reader does not derive much benefit from it.

[2] "Les lois dans la signification la plus étendue sont les rapports nécessaires qui dérivent de la nature des choses."

a good deal of criticism and some ridicule, especially from readers of a juristic bent. In the range of philosophy from Plato to Locke law had received many varieties of definition; whole systems of thought had turned on the controversy between those who regarded it as essentially a dictate of reason, and those who conceived it as the command of a superior; but no one had ventured to define law as merely a series of "relations." Whether or not Montesquieu's expression is the most perfect possible, the idea which he aims to convey by it is most important. His phrase, as his exposition shows, is designed to exclude from the conception of law the element of arbitrariness or caprice. That anything exists, implies a relationship of cause and effect, and in this relationship inheres the law of its existence. Independently of the laws which men make, therefore, a body of principles is unceasingly operative which determines their institutions and determines their legislation itself. A definition of law that would exclude these ultimate forces would be inadequate. Hence Montesquieu presents the formula which he thinks has sufficient generality to cover all the species.

This definition of law applies, of course, to all created things, animate or inanimate. Taking up man, the only created thing of whom intelligence can be predicated, Montesquieu finds the first body of laws relative to his existence to be the laws of nature. These he conceives to be the principles which have their immediate cause in the essential character of man as man. But Montesquieu does not ascribe to

the natural man either the exalted intelligence or the domineering spirit which figured in the systems of Locke and Hobbes respectively; nor to the law of nature that elaborate content which previous writers had worked out. Pre-social man is, according to Montesquieu, a timid, trembling creature, occupied chiefly in panic-stricken flight from the dangers, real or imaginary, which surround him; and the laws of nature are merely those first unreasoning impulses in accordance with which the natural man avoids aggressive acts that imperil his safety, seeks food to sustain his life, propagates his kind, and ultimately grows into social intercourse with other men.[1] But with the formation of societies and the increase of knowledge that accompanies it the whole situation changes. Men lose their sense of weakness, seek for power over one another, and thus inaugurate a state of war.

In the conditions of this new situation are found the sources of positive laws. These laws fall into three classes, corresponding to three sets of relations. In the relations of different peoples to one another, arising particularly from the state of war which normally prevails among them, is the source of the law of nations. In the relations between governing and governed parts of any particular society is the source

[1] Montesquieu includes the idea of reverence for a Creator among the laws of nature, ranking it as first in importance but not in order of these laws. The inclusion of this idea, however, is wholly illogical and is irreconcilable with his primary conception of either the pre-social man or the laws of nature. In this same chapter he declares that speculation on the origin of man cannot be conceived to appear in the state of nature. *Cf.* Book I, chap. ii.

of political law (*le droit politique*). In the relations which the individual citizens have with one another is the source of civil law.

The law of nations is common to all societies, and it is based on the principle that each nation must in peace do the most good and in war the least evil that is compatible with its particular interests. Political and civil laws vary from nation to nation, and result from the application of human reason to the particular circumstances of a given society.[1] Thus the most "natural" form of government is, Montesquieu says, that form whose character has the best relation to the character of the people for whom it is established. So with civil laws: they must have a relation to the physical character of the country and to the climate, to the prevailing occupations of the people, to the amount of liberty permitted by the constitution, to the size and characteristics of the population, and to its religion, wealth, commerce, morals and manners. Further, the laws must have certain relations with one another,—with the circumstances of their own origin, with the purpose of the lawmaker, and with the subject-matter to which they apply. All these various relations in their totality constitute what Montesquieu designates the "spirit of the laws," and the consideration of them all in this sense is the purpose of his work.[2]

[1] Montesquieu seems to distinguish between laws in general and law in general. Laws (*les lois*) in his sense have been defined above; law (*la loi*) in general he defines as "human reason so far as it governs all the peoples of the earth."—I, iii.

[2] Bk. I, chap. iii.

3. *Forms of Government according to Nature and Principle*

The plan thus proposed by Montesquieu involves in its execution a consideration of the leading facts and characteristic principles of public law, jurisprudence, economics and sociology, as well as of politics proper, and all of these fields are covered by the complete work. The great mass of heterogeneous matter is pervaded by a certain system, and the key to this system is to be found in the philosopher's classification of governments and in his doctrines as to the principles which characterize the different forms. Politics proper thus gives coherence to the whole work, however widely the detail may diverge from this field and however strongly the author may be imbued with the spirit of the law-giver and jurist as distinct from that of politician.

Montesquieu assumes a threefold classification of governments, — republican, monarchic and despotic, — which becomes immediately fourfold by the division of republican governments into democracies and aristocracies. The basis of this classification he finds first in the "nature" of the systems; that is, in the structure of the governments. The republican system is that in which sovereign power is possessed by either the whole people or some part of it; monarchy consists in the rule of an individual according to fixed laws; despotism is the rule of an individual without law and without restraint.

There is in this aspect of the classification, as

Montesquieu puts it, little logic and no novelty. He employs no single basis of division, but distinguishes the different species partly according to the number of individuals holding the supreme power and partly according to the manner in which the power is exercised; and both the names and characteristics which he gives to the different classes are as old as political speculation.

Much more significant, however, than the differences of "nature" among the species of government are the differences of "principle." Montesquieu discriminates with particular care between the nature and the principle of a government; by the one term he designates the peculiar structure; by the other, "the human passions which make it act."[1] Each of the four kinds of government, therefore, has its peculiar principle. In a republican government this is "virtue"; not moral or Christian virtue, but political virtue in the strict sense, namely, "love of country and of equality."[2] In democracy this virtue rules in its most unqualified form; in aristocracy, which is also, according to Montesquieu, a republican government, the principle of virtue takes on a particular aspect which he designates as "moderation." His thought is that the members

[1] Bk. III, chap. i.

[2] Montesquieu was subjected to much criticism for his ascription of "virtue" exclusively to republican governments, and he explained his meaning in an *avertissement* prefixed to the later edition of his work. Here he defined "virtue" as above, and pointed out that he had not represented such virtue as possessed exclusively by republican governments, but merely as relatively more influential in them than in other governmental forms.

of the ruling class in the aristocracy are restrained in their government by consideration both for the lesser people and for one another. Moderation thus is the soul of such a government; but it must be moderation based on virtue, not that which is due to lack of energy or spirit.[1]

In monarchy the principle is "honour." Distinctions of rank and dignity are essential features of this kind of government, according to Montesquieu, and by "honour" he means a high sense of the rights and privileges pertaining to each preëminent class or individual. For the sake of these privileges and dignities men will, he believes, manifest much the same spirit and ability that are manifested in republican governments under the inspiration of a sense of equality; the latter is excluded from monarchy by the nature of things, and therefore honour as a spring of action takes its place. In honour, moreover, understood as the feeling of class privilege, lies the practical guarantee that monarchy shall not be transmuted into despotism. The principle of this latter form of government is "fear." Everything turns on the power and readiness of the prince to strike down whom he will at any moment. Neither virtue nor honour has any place in a system where there is no law but the caprice of a single man.

By reference to these various kinds of nature and principle, Montesquieu classifies and explains a multitude of the most important social and political

[1] J'entends celle qui est fondée sur la vertu; non pas celle qui vient d'une lâcheté et d'une paresse de l'âme. — III, iv.

institutions and laws known to history and observation. He shows that a definite relation to the nature of a government determines the character of those fundamental laws which make the constitution. For republican governments these must regulate the suffrage and elections, define the form and action of the assemblies and other organs of government, and fix the number and powers of the magistrates. Montesquieu's ideas on the details of these laws follow very closely the ideas of Aristotle, and his illustrations are derived chiefly from Greece and Rome.[1] Thus we find the doctrines that choice of officers by lot is appropriate to democracy, choice by election to aristocracy; that legislative power should be in the body of the people in a democracy, but in a select council or senate in an aristocracy; that the people as a whole are excellent at selecting magistrates to carry out their will, but incapable of carrying it out well by themselves. On the question as to whether voting should be secret or open, a question that he regards as most important, Montesquieu's judgment is that for democracy open voting is essential, in order that the lesser people may be enlightened and restrained by the greater;[2] for aristocracies, or for an aristocratic senate in a democracy, secret voting is indispensable in order to prevent intrigue and faction (*brigue*).[3]

[1] Bk. II, chaps. ii and iii.

[2] Il faut que le petit peuple soit éclairé par les principaux et contenu par la gravité de certains personnages. — II, ii.

[3] Montesquieu thinks that faction is on the whole good in a democracy. It at least keeps the people interested in public affairs and acts thus as an obstacle to decay.

For monarchy the most important laws relative to its nature are those which insure the preëminence of the privileged classes, especially the nobility. The maxim of monarchy is: "No monarchy, no nobility; no nobility, no monarchy."[1] Next in importance to the guarantee of the privileged classes is some organ for the preservation of the laws (*un dépôt des lois*). The function of guarding the laws cannot properly be intrusted, Montesquieu believes, to either the nobility or the royal council; it must be assigned to an independent body or series of bodies. What he has really and almost exclusively in mind here is the condition of the French monarchy, and the depositary of the laws which he is thinking of is the judicial bodies, namely, the ancient *parlements*.

As to despotic government, the only institution peculiarly appropriate to its nature is the vizirate. Montesquieu's conception of despotism is strictly that of the Oriental type,—the dominion of an idle and effeminate voluptuary, who devolves all the responsibility for government upon a favourite and supplants him by another at the suggestion of any caprice or whim. A council or cabinet to advise the despot is incompatible with the nature of the government, in Montesquieu's opinion, since that would require the exercise of choice among the various opinions or suggestions offered, and this would involve more personal effort than the rôle of despot permits. Hence the single, all-controlling vizier is characteristic of this species of government.[2]

[1] Bk. II, chap. iv. [2] *Ibid.*, chap. v.

The relation of laws and institutions to the principles of the various species of government opens to Montesquieu a field for a rich variety of comment and suggestion in his characteristic style.[1] Education and legislation, he holds, must correspond in character to the principle of the particular government. In the development of this idea in reference to republics and despotisms he rises little above the commonplaces of Greek and Roman literature; as to monarchy, on the other hand, his treatment of institutions in their relation to the principle of "honour" has a marked quality of freshness and ingenuity. His great preoccupation is to assure to the nobility an indispensable position in both the social and the political structure. In a democracy the laws must aim to promote the love of equality and the practice of frugality; and here Montesquieu approves the ancient theory that an equal distribution of wealth may properly be a conscious purpose of the law. In aristocracies legislation should be so framed as to prevent extreme assertions of dignity and privilege by the ruling class and to render impossible the exploitation of the subject class through taxation. Moderation of wealth and of power should always be aimed at. On the one hand, the nobility should be excluded from commercial pursuits, since the qualities developed therein — equality, frugality and industry — are more appropriate to democracies; on the other hand, the laws should avoid all provisions designed to magnify and perpetuate the greatness of

[1] Bks. IV to VIII are concerned with this general subject.

the ruling families, since such provisions are the special characteristic of monarchy. In monarchy the protection and exaltation of the privileges of the nobility should be a prime object of the laws. Hence in monarchy all the devices by which the dignity of the privileged classes is enhanced, and the principle of honour thus kept active, must be resorted to in legislation. Entail and primogeniture must render certain the maintenance of family estates, and insure the perpetuity of the noble class, and the dignities and rights attaching to fiefs must be carefully preserved. The inconveniences resulting from such a system are great, but the system is indispensable to the maintenance of that sense of honour which alone makes monarchy possible without despotism.

Further applications of his classifications of governments according to nature and principle are responsible for Montesquieu's conclusions on other important aspects of policy. Thus he demonstrates that service in public employment should be compulsory in republics but not in monarchies; that the union of civil and military authority in the same office is permissible in republics but not in monarchies; that sale of public offices is a useful method of bestowing them in monarchy but not in other forms of government;[1] and that sumptuary laws are

[1] Montesquieu holds that it is a good thing, "because it induces the performance as a family profession of a duty which would not be undertaken solely for the sake of virtue; because it commits every one to his duty and renders the privileged orders of the state more permanent." Further he argues that where there is no provision for public purchase, appointment to office is procured through the secret

appropriate to republics but not to monarchies. Many other features of government are also covered in his application of the theory of distinctive principles. For our purpose, however, it will suffice to consider particularly his doctrine as to the transformations of the different species of government.

4. *Transformation of Governments*

It was not in the nature of Montesquieu's political science to attach importance to the permanence of any governmental form *per se*. The feeling of Aristotle that revolution is deplorable, and that of Bodin that it is inevitable, are alike inconspicuous in Montesquieu. He regards the existence and excellence of any particular form as so purely relative a matter, and so entirely dependent upon other facts, that a transformation requires neither approval nor disapproval, but merely explanation. The most fundamental element in the explanation is to be found, he declares, in the axiom that "the corruption of every government begins almost always with the corruption of its principle."[1] The duration of any of the forms depends, that is, upon the persistence in a given society of that particular spirit which is

purchase of the influence of courtiers, and that the open market would probably result on the whole in better service.—Bk. V, chap. xix. Montesquieu himself held by inheritance the office of vice-president of the *parlement* of Bordeaux.

[1] Bk. VIII, chap. i. His use of the word "corruption" here implies no judgment that moral deterioration is involved in the transformation of principles.

characteristic of the form. The passing of democracy is at hand when the feeling of true equality begins to disappear; aristocracy is doomed when the spirit of moderation ceases to prevail among the ruling classes; and monarchy cannot endure when honour becomes weak among the privileged orders. Despotism is unstable in its very essence; and its duration is determined by happy accidents that check the working of its principle.

As to the character of the change which takes place when the various principles fail, Montesquieu has no broad theory to suggest; no cycle is presented like those of Plato, Polybius and many of the older philosophers down to Vico, through which it is almost inevitable that governmental forms should move. The principle of democracy becomes corrupt when the spirit of equality either is lost entirely or is carried to excess; in the first case aristocracy or monarchy is established, in the second case anarchy and despotism follow.[1] The principle of aristocracy is corrupt when the nobility cease to feel the perils and responsibilities of their political power more than its delights, and when they rule arbitrarily rather than in accord with law. When they make themselves hereditary, aristocracy has disappeared, and the state is an oligarchy. The only transformation of monarchy which interests Montesquieu is that which brings despotism. This ensues when the nobility cease to maintain their dignity and privileges, when in exchange for the monarch's favours

[1] *Ibid.*, chap. ii.

they sacrifice their independence.[1] His words here point directly at the policy of Richelieu and Louis XIV, though he names only the Roman emperors.

The inevitableness of transformation in a government whose principle has been transformed appears with the utmost clearness from a consideration of the relation of all the laws and institutions to this principle. Almost all laws and institutions are good, Montesquieu believes, so long as the principle of the system remains intact; for all the legislation, manners and morals will be conformed to this principle. But when the principle, or, in other words, the spirit of the society, is changed, the old laws and institutions, being wholly out of relation to the new principle, are inherently vicious and contribute only to hasten the general disorder.[2]

One fact that has, in Montesquieu's opinion, a direct and decisive influence on the maintenance of the principle of a government is the extent of territory subject to it. He lays down categorically the dogma that republican government is appropriate only to small territories, monarchic government to territory of moderate extent, and despotism to very great regions. It follows, therefore, that any material

[1] La monarchie se perd lorsque le prince rapportant tout uniquement à lui, appelle l'État a sa capitale, la capitale à sa cour, et la cour à sa seule personne. — Bk. VIII, chap. vi.

[2] He illustrates this point by reference to the long struggles over the judicial system in the late Roman Republic; where successive dictators strove to secure a system of selecting *iudices* that should insure a proper administration of justice, but failed because the whole institution was adapted only to the spirit that had passed out of the republic.

change in the size of a state will be followed by a transformation in the principle of its government and hence by a change in the form of government itself.[1] Under such circumstances a republic has, in the nature of things, little chance of permanence; for expansion of its territory and population is incompatible with the principle of its government, while, on the other hand, the scantiness of its population leaves it no adequate means of defence against the encroachments of foreign monarchies. This dilemma, Montesquieu believes, accounts for the appearance of the federal republic as a form of political organization. Federation solves the problem of providing for necessary self-defence without loss of the republican spirit.[2]

Montesquieu's theory as to the relation between the form of government and the extent of territory puts him in clear opposition to the Machiavellian theory of expansion. The Italian held that territorial growth was essential to the life of a state, whether republic or monarchy; the French philosopher holds that indefinite expansion is compatible only with the principle of despotism, and that a policy directed to this end is fatal to the existence of republics and even of monarchies.

5. *Theories of Liberty and Slavery*

Of all the topics of his great work that give it significance in the history of political science, Montesquieu's theory of liberty may probably be assigned

[1] Bk. VIII, chaps. xvi to xx. [2] Bk. IX, chap. i.

the first place in importance. The influence of his ideas upon this subject is discernible in all parts of *The Spirit of the Laws*, though the formal discussion of liberty and slavery is to be found in Books XI, XV, XVI and XVII. Recognizing the great variety in the conceptions of liberty past and present,[1] he seeks to attain a high degree of precision in his own treatment. In its broadest sense liberty consists, he says, in the belief that one has that he is acting according to his own will.[2] But there are two species of this liberty, political and civil. Political liberty consists in the power to act, not absolutely as one wishes, but as one ought to wish; or, making the conception conform to the broad definition of liberty, in the security one feels that he can act thus. Such security can exist, Montesquieu holds, only under a government that is based on law; therefore political liberty consists in the security one feels that he may do whatever the laws permit.[3] Civil liberty is not concisely defined by Montesquieu, but its meaning is indicated by the fact that it has the same relation to chattel slavery that political liberty has to despotism; the relation, that is, of logical contradictory.[4] Concretely civil liberty and political liberty are widely different in their incidents, but civil slavery and political slavery are often hardly distinguishable.

[1] Bk. XI, chap. ii.

[2] La liberté philosophique consiste dans l'exercice de sa volonté ou du moins (s'il faut parler dans tous les systèmes) dans l'opinion où l'on est que l'on exerce sa volonté. — XII, ii.

[3] Bk. XI, chap. iii, and Bk. XII, chap. ii.

[4] Compare the last reference with Bk. XV, chap. xiii.

In these definitions and distinctions Montesquieu scarcely achieved all the clearness and exactness at which he evidently aimed. His chief preoccupation, however, was to set forth the features of governmental organization and action which in his mind were best adapted to the ends of what he called political liberty. Security against human power and caprice he held to be the essence of this kind of liberty. Subjection to law but not to man was the solution of the problem, and this must be attained by such distribution and counterbalance of the various powers involved in the administration of government that abuse of any one of them should be impossible. In the idea of sovereignty Montesquieu manifests no interest. The term is neither discussed nor defined, and it is but casually and infrequently mentioned. The unrestricted power which it connotes is incompatible with Montesquieu's conception of a free government, no matter whether the power is possessed by a monarch, by an aristocracy or by a democracy. Liberty can exist only where the possessors of governmental power are subject to limitations.[1] Not that these limitations necessarily insure liberty: power always tends to be abused, and unless a constitutional system is so arranged that one power is checked by another, the citizen still may lack that security in which liberty consists. The one constitution known to history that seems to have been constructed with special reference

[1] La démocratie et l'aristocratie ne sont point des États libres par leur nature. La liberté politique ne se trouve que dans les gouvernements modérés. — XI, iv.

to the maintenance of political liberty is, in Montesquieu's opinion, the English constitution. In it the separation of governmental powers and the check and balance of each upon the others are most perfectly exhibited, and Montesquieu devotes his most famous chapter to an analysis of this English system.[1]

The doctrine of the separation of powers here presented, and indeed the whole chapter in its essential spirit, are taken directly from Locke,[2] but a great development of the Englishman's ideas is discoverable before the discussion is completed. Montesquieu's three powers that characterize every state are, as first set forth, precisely Locke's, namely, legislative, federative and executive.[3] In his very next paragraph, however, he assigns the name "executive" to the second species, which Locke had called federative, and gives to the third species the designation "judicial" (*la puissance de juger*). Thus appears in political philosophy for the first time the now commonplace classification of the powers of government. It is to be observed, however, that in the shape into which Montesquieu has thus far brought the matter, no one of the three powers is concerned with the execution of legislation that lies outside the field of both the law of nations and civil law. His "executive" is concerned with peace and war, embassies, the public safety and invasions, and his judicial

[1] Bk. XI, chap. vi.

[2] *Supra*, pp. 354–356.

[3] ". . . la puissance législative, la puissance exécutrice des choses qui dépendent du droit des gens, et la puissance exécutrice de celles qui dépendent du droit civil."

power is limited to the punishment of crimes and the determination of disputes between private citizens.[1] The whole range of the executive duty which is now denoted by the term "civil administration" — the carrying into effect of legislation that deals with internal affairs — is left out of the classification by Montesquieu.[2] Without noting the omission, however, he begins within a few paragraphs to speak of the executive power as concerned with the enforcement of all legislation on whatever subject, and it is in this sense, rather than in the very restricted sense in which executive is at first defined, that the term is used throughout the remainder of his work.[3]

Having thus adopted and expanded Locke's analysis of governmental powers, Montesquieu proceeds to apply the principle of check and balance. Each of the three powers must be exercised by a different organ, and only so far as this is provided for can a constitution be regarded as insuring political liberty to the citizen. Most European monarchies have, Montesquieu thinks, achieved the separation of the judicial power from the other two, since the monarchs have ceased to decide suits in person. But the sepa-

[1] "Par la première le prince ou le magistrat fait des lois pour un temps ou pour toujours, et corrige ou abroge celles qui sont faites. Par la seconde il fait la paix ou la guerre, envoie ou reçoit des ambassades, établit la sureté, previent les invasions. Par la troisième il punit les crimes, ou juge les différences des particuliers."

[2] None of his categories covers such important governmental functions, for example, as those of assessing and collecting taxes, constructing a road, or coining money.

[3] For the defects of Montesquieu's classification of governmental powers in even its most complete and generally adopted form, see the acute criticism in Goodnow, *Politics and Administration*, pp. 11 *et seq.*

ration of legislative from executive is to be found only in England. This and a large number of other features of the English constitution that make for political liberty are set forth and justified by Montesquieu with great insight and philosophical acumen. The monarchic executive,[1] the bicameral legislature, with one house made up of representatives elected by the people at large, and the independent courts, with their juries of private citizens, he regards as institutions based on the soundest principles of political science.

The interrelationships of these three organs which the long struggles of English constitutional development had worked out — the royal veto, the power of impeachment, the responsibility of ministers, the annual budget, the mutiny bill and the habeas corpus — are all explained as illustrations of the general principle of check and balance between the three great departments of the government. Most fundamental in the operation of the system are the reciprocal restraints of executive and legislature, complicated by the fact that the two houses of the legislature must be brought into unison. Montesquieu perceives that the normal condition as between these three organs — the king and the two houses — would be deadlock and inaction; but "the necessary

[1] That the system which has developed in England since Montesquieu's time would not have met with his approval is indicated by the following passage: Que s'il n'y avoit point de monarque, et que la puissance exécutrice fût confiée à un certain nombre de personnes tirées du corps législatif, il n'y auroit plus de liberté, parce que les deux puissances seront unies. — XI, vi.

movement of things" would, he thinks, force them to join in the motion.[1]

The constitutional system through which liberty is secured in England was derived, Montesquieu believes, from the ancient Germans as described by Tacitus.[2] The separation of powers and the reciprocal checks do not appear in anything like the same degree in other European governments. It can be traced to some extent, however, in the republics of antiquity, Montesquieu believes, and he considers that Aristotle's "polity" and the Roman constitution in the best days of the Republic embodied some essential features of the system.

Important as this guarantee of liberty is, however, it is not itself conclusive. Though the constitution may embody all the features described above, the citizen may fall short, from another point of view, of that sense of security which is the essence of liberty. This would be the case unless the laws in reference to accusations of crime should be framed on sound principles. Montesquieu thus introduces in Book XII his notable contribu-

[1] Comme par le mouvement nécessaire des choses elles sont contraintes d'aller, elles seront forcées d'aller de concert. — XI, vi.

[2] "Si l'on veut lire l'admirable ouvrage de Tacite sur les mœurs des Germains, on verra que c'est d'eux que les Anglois ont tiré l'idée de leur gouvernement politique. Ce beau système a été trouvé dans les bois." By this passage Montesquieu makes himself the forerunner of a school of historians which had a distinguished career in the nineteenth century. Voltaire says, in commenting on this passage: "J'aimerais autant dire que les sermons de Tillotson et de Smalridge furent autrefois composés par les sorcières tudesques, qui jugeaient des succès de la guerre par la manière dont coulait le sang des prisonniers qu'elles immolaient."

tion to the reform of criminal law and procedure. It is not necessary for us to follow him in the details of his discussion. Suffice it to say that his spirit is that which ultimately effected in Europe a transformation of the whole system of crimes and penalties, through the substitution of reason for tradition in dealing with the matter. Montesquieu maintains, for example, that the death penalty should never be inflicted on the testimony of a single witness; that all penalties should be of a character corresponding to the character of the offences — that is, spiritual punishment for sacrilege, fines for offences against property, *etc.*; and that accusations of treason (*lèse-majesté*) should be guarded with special care against abuse to the detriment of the subject.

Civil liberty, as distinct from political liberty, is nowhere defined in terms by Montesquieu, but the distinction is recognized, and the negation of civil liberty, *i.e.* slavery, is systematically discussed in Book XV. Here the philosopher shows himself radical and uncompromising in his contention that the institution is in its very nature evil. It is bad for the slave, because it prevents him from self-development; it is bad for the master, because it tends to make him harsh, sensual and cruel. No one of the theories on which slavery has been explained as rational is acceptable to Montesquieu. That a man vanquished in war may by contract, entered into to save his life, become justly the slave of the victor, cannot stand as good reasoning, because the victor has no right to take the life of the vanquished; that a free

man may sell himself is impossible, for a sale involves exchange of values, while the man who sells himself gets nothing and the other party everything; and if slavery can come into existence in neither of these ways, the idea that any one can be born a slave falls to the ground. The origin of the institution can be explained by historical considerations, but this is not to justify it in reason. In despotic governments civil subjection came into existence as a concomitant of political subjection, and here it may be said to have had some degree of usefulness; in warm climates, where labour is particularly irksome, it has come into existence as a means of compelling men to work, and in this fact is all the basis Aristotle has for his theory of slaves by nature. But in whatever degree these causes have operated in other times and in other places, they have not modified the great principle of natural reason that men are born free and equal; and for modern times and for European countries, there is no ground whatever on which the resuscitation of the system can be based. All the work that society requires can be performed by free labour, provided that reason, not greed, fix the limits of what is necessary. The modern suggestions that slavery would be advantageous for European society emanate, Montesquieu declares, from the luxury and sensuality of the time, not from love of the public welfare.

The moral fervour of these chapters of Montesquieu on slavery is in marked contrast to the scientific calm that pervades most of his work. He feels himself

that his heart rather than his intellect has guided his pen.[1] Yet with all his splendid glow of wrath at the abuses of civil slavery,[2] the effect of this particular book is hardly more impressive than that of the one devoted to political liberty, where the scientific spirit is so carefully maintained. Taken together, the two put Montesquieu in the front rank of those who in the eighteenth century held high the standard of idealism in all that pertains to liberty.

6. *Theory of Climate and Physical Environment*

Montesquieu's views on slavery have very much in common with those of his great predecessor in political philosophy, Bodin. Not less clearly in line with Bodin's work is the careful treatment given by Montesquieu to the influence of physical environment upon social and political institutions. That the doctrine of the later writer is distinctly superior in scientific value is but an evidence of the great advance in knowledge of the material world that had been made between the sixteenth and the eighteenth centuries.

Montesquieu avoids the emphasis laid by Bodin on mere differences of latitude and longitude, and puts

[1] Je ne sais si c'est l'esprit ou le cœur qui me dicte cet article ci. —XV, viii.

[2] See particularly chap. v, "D'Esclavage des nègres," in which he sums up with bitter irony the arguments for the introduction of African slavery into America; for example: "Les peuples d'Europe ayant exterminé ceux de l'Amérique, ils ont du mettre en esclavage ceux de l'Afrique, pour s'en servir à défricher tant de terres. . . . Ceux dont il s'agit sont noirs depuis les pieds jusqu'à la tête; et ils ont le nez si écrasé qu'il est presque impossible de les plaindre."

most stress on differences of temperature and moisture in the air, and on differences of fertility in the soil. The basis of the influence of climate on character is, he holds, the effect of heat and cold, dryness and moisture, on the organs of the human body. Although his physiological explanation[1] of this effect may have its weaknesses in the light of twentieth-century science, and though the data of history and observation which he adduces in support of his theory would hardly stand the test of serious criticism, his conclusion, nevertheless, would easily find favour still, that climatic conditions have a direct connection with the diversity of populations in respect to both intellect and passions. Institutions must necessarily vary, he believes, according to the characteristics of the people. Of most fundamental importance is the difference between the energy and activity which are produced by the colder climates and the indolence produced by the warmer. This explains, for example, the prevalence of monasticism in warmer climates and the prevalence of drunkenness in the colder. It explains also — and in tracing this connection Montesquieu displays some of his cleverest analysis —the greater degree of political liberty in the colder climates, or at least in those climates which either by temperature or by humidity produce a restless and irritable spirit among the people.[2]

[1] Bk. XIV, chap. ii.

[2] England is his illustration of this point. See Bk. XIV, chap. xiii. He agrees with Bodin, however, that this restlessness is well adapted to war and ill adapted to diplomacy, and that therefore England is apt to lose in her treaties what she wins in hostilities.

It is the relation between the climate and liberty that constitutes the most important feature of this whole subject for political philosophy proper. Summarily stated, his theory is that every species of liberty is favoured by the colder climates, and slavery by the warmer. As to political liberty, he illustrates his view chiefly by a comparison of Asia with Europe, showing the general prevalence of despotic government in the former and of more or less free government in the latter. The obvious objection, that with the exception of its extreme southern projections Asia possesses the same climatic conditions as Europe, is met by a very interesting qualification of the principal theory.[1] In Asia, it is pointed out, there are extremes of hot and cold climate with no broad belt of temperate climate between them. The peoples to the southward of the great mountain system and those to the northward of it are of totally different temperaments, and hence the hardy and vigorous northerners readily conquer and reduce to servitude the soft and effeminate southerners. In Europe, on the other hand, the climate changes by imperceptible degrees from the heat of the south to the cold of the north; adjacent peoples, therefore, do not manifest widely different characteristics, and there is no opportunity for the complete subjugation of any one by its neighbour. Another influence that promotes the distinction between the two continents in respect to political liberty is the fact that in Asia the natural geographical divisions, as determined by river sys-

[1] Bk. XVII, chap. iii.

tems, mountain ranges, *etc.*, are of vast extent, and, therefore, according to the principle already noted, promote despotism, while in Europe the natural divisions are small and therefore favour the compact communities to whom liberty is normal.[1]

As to civil liberty, the influence of climate has been noted already in our description of Montesquieu's theory of slavery.[2] The relaxing effects of high temperature conduce particularly to the subjection of men to absolute control. The same principle, with, however, important modifications and additions, is discernible in what Montesquieu calls "domestic" as distinct from "civil" slavery. By domestic slavery he means the complete subjection of women that prevails in Oriental countries and that finds expression in the institution of polygamy.[3] Polygamy, like civil slavery, may be explained though it cannot be justified. It is useful neither to the race nor to either sex. Its existence is due partly to the fact that in warm climates women mature earlier, and earlier lose their charms, leaving men dissatisfied with them; partly to what Montesquieu thinks is a fact, that in such climates there is naturally an excess of women; and partly to the fact that in warm climates the procurement of sufficient food for the support of large families is an easier matter than in cold climates. The institution is essentially akin to political despotism. It belongs to peoples among whom tranquillity is synonymous

[1] *Ibid.*, chap. vi.

[2] *Supra*, p. 417.

[3] Bk. XVI.

with absolute subordination of many to one, and that alone brings peace.[1]

In the same way that climate is shown to have a definite relation to government, Montesquieu shows the influence of the nature of the soil. This is traceable to topography. Fertility belongs to the plains; sterility to the mountains. On the plains, where nature affords no facility for resistance and defence, conquest means subjugation and tyranny; in the mountains abundant facilities for long resistance insure liberty.[2] The character of the people, moreover, is hardier and more courageous where the difficulty of getting food is greater. Several closely related causes operate thus to produce conditions which bring political organization into definite connection with environment.

This doctrine of Montesquieu as to the influence of soil on government is but an expansion of Bodin's comments on the relation between topography and politics. The expansion exhibits, however, some of the best features of the later writer's philosophy.

7. *Social, Economic and Religious Policy*

Fully one-half in bulk of the *Spirit of the Laws* is concerned with the relation of the laws to conditions

[1] Montesquieu takes occasion to declare that the harem could never exist where the women had the lightness and indiscretion, the likes and dislikes, the big and the little passions of the European women. "Quel est le père de famille qui pourroit être un moment tranquille? Partout des gens suspects, partout des ennemies; l'État seroit ébranlé; on verroit couler des flots de sang." — XVI, ix. The satirical allusions of the passage are in the vein of the *Lettres Persanes*.

[2] For analogous reasons islanders are, he thinks, usually more disposed to free government than are continental peoples. — XVIII, v.

and institutions which are distinctively social, economic and religious, rather than political, in character. In the discussion of these subjects Montesquieu assumes almost exclusively the attitude of the jurist dealing with historical and comparative jurisprudence. Here particularly appears the ancient concept of the lawgiver, prescribing from the heights of his superior — almost supernatural — wisdom the rules for the government of lesser men. Yet Montesquieu keeps well in touch with the teachings of history and observation, and his judgments as to the method and content of legislation have nothing utopian about them, however great may appear at times the influence of a rational idealism.

Perhaps the best illustration of his broad philosophy is contained in Book XIX, where he considers the relation of the laws to the general spirit, the morals and the manners (*mœurs et manières*) of a nation. The core of his doctrine here is that there is discernible in any given people taken as a whole a spirit that is peculiarly its own, and that legislation that does not conform to this general spirit cannot be of value. A practical conclusion of importance is that since morals and manners form a very large element in this general spirit, the legislator must make his work follow the prevailing standards and customs. Hence it can be no function of political law to deal with vices that are distinctively moral. The morals and manners of a people are to be reformed by other means than penal legislation.[1]

[1] Bk. XIX, chaps. xi, xiv, xvi.

The economic features of society and of law are treated with much fulness by Montesquieu. The great questions turning upon the size and increase of the population, the causes and remedies of pauperism, and theories of charitable relief are discussed at length in a spirit that suggests very strongly the development of economic science that was now soon to receive exact form through Adam Smith. Particularly noteworthy in this respect are Montesquieu's chapters on commerce, money and exchange.[1] His views in respect to commerce, both in its historical development and in its essential principles, are of special significance. He is influenced here more or less by the doctrines of the ancient philosophy which he knew and loved so well, but he exhibits also a full consciousness of the forces which worked to transform the face of the earth in the seventeenth and eighteenth centuries. His forms of government he brings into relation with commerce by the principle that the basis of foreign trade is different in monarchies from what it is in republics. In monarchy the foundation of the trade is the luxury of the upper classes, demanding commodities from abroad to satisfy their cultivated tastes, while in republics the motive of the commercial development is merely the attainment of wealth by those who take part in it. Related to this distinction is his conclusion that banks and great corporations, the instrumentalities of highly developed commerce, are not well suited to monarchy, inasmuch as they promote excessive

[1] Bks. XX, XXI and XXII.

fortunes among the citizens, while the nature of monarchy requires the prince to stand far above all his subjects in respect to wealth.[1] He sees reason, moreover, why great monopolistic commercial corporations should not be tolerated in republics when individual effort and competition could accomplish the same ends. The relation of commerce to his favourite theory of monarchy is further illustrated by his dogma that the nobility should be excluded from commercial pursuits. Such pursuits are incompatible with the principle on which class privilege rests; and moreover the wealth and power which arise from successful commerce have their proper function in enabling their owners to qualify for entrance into the ranks of the nobility. Once in the privileged order, a man should leave the profits and opportunities of commercial life to others. Thus is created, Montesquieu thinks, that *noblesse de la robe* which is so indispensable an element in the properly organized monarchic state.[2]

The relation of the laws to religious and ecclesiastical conditions is discussed in a spirit of reverence for Christianity as unquestionable divine truth. At the same time there are many evidences of a scientific detachment that produces doctrines of a rationalistic

[1] Bk. XX, chap. x. There is here probably a reflection of the doctrine of Harrington that the balance of property and the balance of political authority must be in the same hands. Montesquieu says: to introduce bankers and commercial corporations into monarchy, "c'est supposer l'argent d'un côté et de l'autre la puissance; c'est-a-dire, d'un côté la faculté de tout avoir sans aucun pouvoir, et de l'autre le pouvoir avec la faculté de rien du tout."

[2] Bk. XX, chap. xxii.

and even Machiavellian character.[1] Disregarding all questions of relative truth or falsity in the creeds, Montesquieu finds that Christianity is best suited to nations having limited governments, Mohammedanism to those subject to despotism; and that, "humanly speaking," the limits of Christianity and Mohammedanism have been determined largely by climate.[2] As to the two branches of Christianity, Catholicism is best suited to monarchy, Protestantism to republican government.[3] There is inevitably a close relation between the laws of the prevailing religion and the political and civil laws of a nation. Where the restraints of religion are slight, the penalties of civil law must be more severe; where the political law is inadequate, the rules of religion must supplement it.[4] On the question of toleration, Montesquieu presents no abstract theory but lays down certain practical maxims. Assuming that toleration of a religion is not at all an approval of it, he declares that where a state permits the existence of several religions, it must in the interest of public order oblige them to tolerate one another. The most general principle of good policy would be: no new religion shall be admitted into a nation if it can be kept out; once there, however, it must be tolerated.[5] Above all, the

[1] Montesquieu was violently attacked by theological critics and was accused of Spinozism and other serious heresies. For his formal reply to these critics, see his *Défense de l'Esprit des Lois*, published in 1749.

[2] Bk. XXIV, chaps. iii, xxvi.

[3] *Ibid.*, chap. v.

[4] Montesquieu illustrates by the "truce of God" as a limitation on the right of private war in the Middle Ages.—XXIV, xvi.

[5] Bk. XXV, chaps. ix, x. This doctrine was assailed as justifying

employment of penal legislation to effect changes in religion must be avoided. Even more than morals and manners, religion lies outside the range of human compulsion.[1]

This last maxim of policy illustrates the principle which is most characteristic of Montesquieu's spirit as legislator. The relations of social life fall into distinct categories which philosophy can make recognizable. For each category a distinct body of rules of legislation is necessary; hence the various species of law (*droit*), — the natural, divine, ecclesiastical, political, *etc.* The climax of rational achievement by man is the assignment of every subject of legislation to its proper class.[2] In the development and illustration of this dogma, Montesquieu presents one of his most suggestive and characteristic books. He points out the evils that result when civil laws encroach upon and transgress the laws of nature; when the civil and the ecclesiastical or canon law are not properly delimited; and when the rules peculiar to civil law are applied to conditions that belong under the political law or the law of nations, and conversely.[3] Finally he introduces the useful distinction

the exclusion of Christian missionaries by heathen princes. Montesquieu's reply was that the true religion was *ipso facto* excepted from the application of his principle.

[1] *Ibid.*, chap. xii; compare Bk. XIX, chap. xiv.

[2] Bk. XXVI, chap. i.

[3] For example, Montesquieu holds that political law secures the liberty of citizens, civil law their property; it is wrong therefore to take private property by political law; that is, to violate the right of property in the name of liberty. On the other hand, such a question as that of the succession to the public domain or other appurtenances of sovereignty must not be determined by the rules of

between police regulations and laws proper, and enters his protest against legislation and administration that confound the two.[1]

8. *Summary and Conclusion*

A broad view and summary estimate of Montesquieu as a political philosopher must centre attention on the scope and method of his thought and his theory of liberty. Under these three categories may be gathered all that is most distinctive in his work.

In content Montesquieu's philosophy is practically unique among the great systems that marked the history of political speculation up to his time. Plato, Aristotle, Aquinas, Bodin, Suarez and Pufendorf, all suggest themselves when one inquires for a body of thought comparable to *The Spirit of the Laws*. But no one of these stands on all fours with it. To mention only the salient points of distinction, Plato and Pufendorf assign to ethical doctrines an importance in politics that is entirely neglected by Montesquieu; Aquinas and Suarez differ from him likewise in respect to the importance of theological doctrine; while Aristotle and Bodin, close to him in many respects, are widely different in the attention which they devote to the general theory of the state in its nature and origin, and to the fundamental principles of public law — topics that are treated in only the most casual and perfunctory way by Montesquieu.

civil law, since the matter is wholly in the field of political law. —XXVI, xv, xvi.

[1] *Ibid.*, chap. xxiv.

His field is, to employ the terms of modern political science, *Politik* rather than *Staatslehre* or *Staatsrecht*; that is to say, he seeks to set forth, not the principles on which the existence and organization of political society must be explained, but the principles which underlie and determine the activities of such a society, assuming its existence and organization. This field of speculation is in a general way the same as that of Machiavelli, but the variety of subjects included in Montesquieu's survey, as well as the depth and thoroughness with which he investigates them, puts his work wholly beyond comparison with that of the Italian in respect to scope. From this point of view *The Spirit of the Laws* may be classed as properly under social science as under political science.

In respect to method, Montesquieu must be classed with Aristotle, Machiavelli and Bodin, as representative of the historical and inductive school. Like all these predecessors, moreover, he was determined more or less by an ideal, while seeking in objective phenomena the basis of his conclusions. The conception of "nature," as the criterion by which in last instance the institutions known through history and observation are to be tested, recurs frequently throughout his work. Thus slavery and polygamy, though explainable by causes beyond the control of man, are, nevertheless, he explains, not for this reason to be regarded as "natural," or rationally justifiable. No institution, however precisely it may be traced to the influence of physical environment, is warranted by the philosopher to be socially and politically sound

unless it conforms to the requirements of "nature." In assuming this ground, Montesquieu yields to the intellectual influences of his time; but he is far less successful than his contemporaries of the *a priori* school in formulating and consistently maintaining a clear conception of the standard which he agrees with them in setting up.

In another respect, however, he makes a distinct advance over his predecessors in the use of the method of history and observation. Machiavelli and Bodin, and in a less degree Aristotle, had confined their observations and inductions to nations which represented a considerable achievement in civilization and enlightenment. Montesquieu, following a tendency which had become pronounced since the discovery of new lands and peoples in the Indies and America, attached rather disproportionate significance to the laws and institutions, the morals and manners, of the remote and uncivilized nations, concerning which more or less authentic information had become available. Hence his frequent resort to the Japanese and Chinese for facts on which to base his social and political dogmas; and hence the numerous instances in which he selects, as a sufficient support for a shrewd and ingenious formulation of principle, some particularly fantastic fable about the customs and ideas of Tartars, Africans or South Sea Islanders. He is as uncritical in the use of such matter as Machiavelli was in the use of Roman history; but in the one case, as in the other, the method was at bottom sound and the insight and genius of the philoso-

pher achieved results that were valuable despite the defective manner in which the method was employed. The widening of the field in which history and observation were to operate was a fact of the first importance in political and social science, and Montesquieu is entitled to all credit for his recognition of this importance, whatever the errors into which he was led by his enthusiasm for the novelties brought within his reach.

In his theory touching liberty, Montesquieu, though moved by the same spirit that had been working for a century in the rationalizing philosophy of Europe, placed himself on different ground from that assumed by any of his predecessors. Their doctrine, especially as summed up by Locke, had defined and defended liberty, both political and civil, by means of the dogma of natural rights. These rights marked out a sphere for the individual within which government could not in nature or reason intrude. Liberty existed when and so far as the freedom of action by the state was restricted. In Montesquieu, however, we hear little or nothing of natural rights. The scope of governmental, that is legislative, activity is not regarded as limited by any group of privileges inhering in the individual. Liberty is distinguished into two species, political and civil, and civil liberty, though ascribed in a way to "nature," appears to depend in last analysis upon social expediency. Political liberty, however, is defined as dependent not upon the exclusion of government or state from any field of action, but chiefly

upon the method through which action in any field is carried on. There is in Montesquieu small suggestion of that individualism which had appeared in some measure in Locke, and which was destined soon to have a great vogue in political speculation. Not the rights of man, but the separation of powers in government, was the essential feature in the concept of liberty that characterized *The Spirit of the Laws.*

This doctrine of liberty was closely associated with the theory of monarchy which was so conspicuous throughout Montesquieu's philosophy. He was concerned to present a system through which the French kingdom could be at the same time justified and reformed. The reform, he conceived, might come through such separation of the legislative from the executive department of government as had been effected in England; the justification he set forth in the theory of class privilege as an essential feature in the nature of true monarchy, and "honour" as its characteristic principle. France was to him too large a nation ever to have republican government. It could, however, have liberty under such a system of organization as he supposed he had found in England. Yet he was far from suggesting that the search for liberty through reform should bring radical transformation. There is no more powerful or more charming passage in *The Spirit of the Laws* than that in which he insists that every nation has an *esprit général* which is peculiar to itself and which should not be interfered with by law, and depicts in a few sentences the general spirit of his own country-

men.[1] This spirit he would at all hazards preserve. The reciprocal reaction of legislation on the one hand and morals and manners on the other is always in the mind of the philosopher; but while he does not question the right, he distinctly rejects the expediency, of deliberate intrusion by the legislator in the latter field.

Montesquieu in the middle of the eighteenth century, like Machiavelli at the beginning of the sixteenth, stands more or less isolated from the general current of political theory as we can now mark its course. The scope and method of *The Spirit of the Laws* find little imitation in the philosophy of the eighteenth century. While Montesquieu undertook to blend politics with jurisprudence, economics and general social science, the tendency of his contemporaries and his successors was sharply to differentiate these various sciences; and while he stood for history, observation and broad generalization as the method of approach to political, economic and social truth, they, with few exceptions, set up the absolute standard of "nature" and deduced from their conception of this entity the doctrines which they held to be of universal validity. Though the spirit of Montesquieu came to its own after several generations, and contributed much to shape the political theory of the nineteenth century, the philosophy that dominated the stirring politics with which the eighteenth century closed was that whose scope and method

[1] Bk. XIX, chaps. iv–vi.

were exemplified in a work that was published fourteen years after the *Esprit des Lois*. That work was the *Contrat Social* of Rousseau.

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